



MARK PESTRELLA, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
40 April 20, 2021

IN REPLY PLEASE
REFER TO FILE

April 20, 2021

CELIA ZAVALA
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**WATER RESOURCES CORE SERVICE AREA
SATIVA WATER SYSTEM APPROVAL AND AUTHORIZATION TO EXECUTE
ASSET PURCHASE AGREEMENT AND OPERATIONS AND MAINTENANCE
AGREEMENT WITH SUBURBAN WATER SYSTEMS
(SUPERVISORIAL DISTRICT 2)
(3 VOTES)**

SUBJECT

Public Works is seeking Board approval of, and authorization for the Director of Public Works to execute, the proposed Asset Purchase Agreement and Operations and Maintenance Agreement with Suburban Water Systems for the sale of the Sativa Water System and interim operations prior to final approval of the sale by the California Public Utilities Commission.

IT IS RECOMMENDED THAT THE BOARD:

ACTING AS THE INTERIM ADMINISTRATOR AND SUCCESSOR AGENCY OF THE DISSOLVED SATIVA LOS ANGELES COUNTY WATER DISTRICT:

1. Find that the approval and execution of the Asset Purchase Agreement and Operations and Maintenance Agreement with Suburban Water Systems is not a project pursuant to the California Environmental Quality Act or, in the alternative, are exempt from the California Environmental Quality Act for the reasons stated in this Board letter and in the record of the proposed activities.
2. Delegate authority to the Director of Public Works or his designee to execute the Asset Purchase Agreement and Operations and Maintenance Agreement with Suburban Water Systems for the sale of the Sativa Water System and interim operations prior to final approval of the sale by the California Public Utilities Commission.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

These actions would find that the recommended actions are not a project or are exempt under the California Environmental Quality Act (CEQA) and allow the County of Los Angeles to sell the physical facilities, operational assets, operational liabilities, and water rights associated with the Sativa Water System to Suburban Water Systems for an agreed purchase price of approximately \$11.8 million. These actions would also allow Suburban to take over the day-to-day operation of Sativa on a contract-services basis during the interim period prior to final approval of the sale by the California Public Utilities Commission (CPUC).

On September 28, 2018, the California State Legislature authorized the State Water Resources Control Board (State Water Board), pursuant to Assembly Bill 1577, to order Sativa to accept administrative and managerial services, including full management and control, from an interim administrator selected by the State Water Board. On October 9, 2018, the Los Angeles County Board of Supervisors adopted a resolution approving the appointment of, and delegating authority to, the Director of Public Works to act as Interim Administrator for Sativa to stabilize and manage the Sativa water system until a permanent water service provider could be found. On November 1, 2018, the State Water Board issued an Administrative Order, which dissolved Sativa's Board of Directors and appointed the County as the Interim Administrator of Sativa. Public Works, on behalf of the County, has stabilized, improved, and managed the Sativa water system while working to find a permanent service provider for Sativa.

On September 11, 2019, Public Works issued a Request for Proposals (RFP) for the proposed sale of Sativa. Five written proposals were submitted to Public Works on November 12, 2019. The evaluation process was completed on December 3, 2019, and Suburban was the highest scored proposer. Suburban Water Systems is an investor-owned water utility providing water service in an approximately 42-square-mile service area that covers all or portions of the Cities of Glendora, Covina, West Covina, La Puente, Hacienda Heights, Industry, Whittier, La Mirada, La Habra, and Buena Park and unincorporated portions of California's Los Angeles and Orange Counties.

The Board authorized negotiations with Suburban on March 31, 2020. The resulting documents from these negotiations are the Asset Purchase Agreement (APA) (Enclosure A) and the Operations and Maintenance (O&M) Agreement (Enclosure B).

Per the APA, Suburban would acquire Sativa's assets for an agreed purchase price of approximately \$11.8 million. The purchase price has been calculated to reimburse the County for all of its out-of-pocket expenditures in connection with the takeover and operation of Sativa through the anticipated date of closing as well as all capital improvements that have been completed as of the date of the APA. The purchase price does not include capital improvements or costs that are paid for or reimbursed by State grant funding. The closing of the acquisition will not occur until the CPUC has approved the APA. The CPUC approval process is expected to take a minimum of 18 months and up to 36 months. The target is for the acquisition to be completed no later than December 31, 2022.

During the interim period prior to the closing of the APA, Suburban would take over the day-to-day operation of Sativa on a contract-services basis in accordance with the proposed O&M Agreement. This will not only allow the County to transition Sativa operations to Suburban but will also allow Suburban to become familiar with Sativa and build trust with the customers. The County and Suburban will work together on community engagement to provide transparency on the transition for the rate payers. Interim period operations include operation, maintenance, and repair of the water

treatment and distribution system, monitoring of water quality, regulatory compliance, facility inspections, and routine maintenance. Suburban will provide licensed operators for the operation of Sativa and field personnel to address water system maintenance and routine repairs. Suburban will further provide office personnel for the Sativa Administrative Office to conduct billing and customer service functions. Suburban will charge the County a flat fee of \$43,925 per month for all of the services and equipment that are the responsibility of Suburban under the O&M Agreement.

Executing the proposed APA and O&M Agreements would ensure an efficient transition of Sativa to Suburban and a final sale that will reimburse the County for approximately \$11.8 million in projected expenditures from the General Fund during its interim operation of Sativa. Sativa's proposed sale to Suburban is consistent with the community's expectation to deliver a permanent owner that provides low water rates (as regulated by the CPUC), great customer service, and clean water.

Implementation of Strategic Plan Goals

These recommendations support the County Strategic Plan: Strategy II.2, Support the Wellness of our Communities and II.2.3, Prioritize Environmental Health Oversight and Monitoring. The recommended actions improve the wellness and social well-being of our communities.

FISCAL IMPACT/FINANCING

Approval and execution of the proposed APA and O&M Agreements and subsequent approval of the sale from the CPUC will reimburse and deposit into the County General Fund in the amount of approximately \$11.8 million for all projected expenses and debts incurred during the interim administration and operation of Sativa. The target is for the sale to be completed no later than December 31, 2022. In the meantime, Sativa's operating costs will continue to be funded by Sativa's water sales revenue and operating transfers from the County General Fund. Sufficient funds for Sativa's operating costs are available in the Sativa Water System Fund Fiscal Year 2020-21 Budget. Funding for subsequent years will be requested through the annual budget process.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On February 13, 2019, the Local Agency Formation Commission (LAFCO) for the County of Los Angeles adopted Resolution No. 2019-02RMD (LAFCO Resolution), which among other things (1) dissolved Sativa and (2) appointed the County as the "successor agency" for Sativa, succeeding to all of the rights, duties, and obligations of Sativa with respect to enforcement, performance, or payment of outstanding bonds or other contracts and obligations of Sativa and winding up the affairs of Sativa pursuant to Government Code Sections 56886(m) and 57451(c) and subject to Health and Safety Code Section 116687, including the power to exchange, sell, or otherwise dispose of all property, real and personal, of Sativa.

The enclosed APA and O&M Agreements have been negotiated by Public Works and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The recommended actions are not subject to CEQA because they are activities that are excluded from the definition of a project pursuant to Public Resources Code Sections 21065 and 15378(b) of the State CEQA Guidelines. The activities are also exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines because the actions are organizational or administrative activities of government

that will not result in direct or indirect physical changes to the environment and it can be seen with certainty that the actions will not have a significant effect on the environment. Approval and execution of the proposed agreements is, in the alternative, categorically exempt from CEQA under Sections 15301(b) and (d) of the State CEQA Guidelines and Class 1(d) and (e) of the County's Environmental Document Reporting Procedures and Guidelines, Appendix G, since they involve ongoing maintenance, operation, and restoration, and rehabilitation of an existing publicly owned utility with negligible or no expansion of use. In addition, based on the records of the proposed project, it will comply with all applicable regulations, the project is not located in a sensitive environment, there are no cumulative impacts, unusual circumstances, damage to scenic highways, listing on hazardous waste site lists complied pursuant to Government Code Section 65962.5, or indications that the project may cause a substantial adverse change in the significance of a historic resource that would make the exemptions inapplicable.

The agreements do not approve any new activities that would be considered a project under CEQA. Prior to approval of any future County proposed projects, Public Works will ensure that any necessary findings are recommended under CEQA. Upon the Board's approval of the recommended actions, Public Works will file a Notice of Exemption with the Los Angeles County Registrar-Recorder/County Clerk in accordance with Section 21152 of the California Public Resources Code.

CONTRACTING PROCESS

On September 11, 2019, a notice of the RFP was placed on the County's "Doing Business with the County" website, "Do Business with Public Works" website, and Twitter. In addition, advertisements were placed in the Los Angeles Daily Journal, Los Angeles Sentinel, and La Opinión newspapers. Also, Public Works informed 1,377 Local Small Business Enterprises, 136 Social Enterprises, and 101 Disabled Veteran-Owned Business Enterprises about this business opportunity. Six firms registered on the Public Works' website for the RFP.

The RFP stated that one firm would be awarded the contract.

On November 12, 2019, five firms submitted proposals: Evaluation committees, consisting of staff from the LAFCO and Public Works' Waterworks Division, evaluated the proposals based on criteria described in the RFP, including technical expertise, experience, personnel, qualifications, and financial information. Based on the evaluation of the proposals, Suburban was determined to be the highest rated proposer for the project. Public Works has further determined that Suburban's proposed rates for performing the services are reasonable.

Public Works has evaluated and determined that the Los Angeles County Code Chapter 2.201 (Living Wage Program) does not apply to the recommended agreement. Public Works did not notify the Los Angeles Building and Construction Trades Council, AFL-CIO, Union on this solicitation because it was not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current County services or projects as a result of this action.

CONCLUSION

The Honorable Board of Supervisors

4/20/2021

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Please return an adopted copy of this Board letter to Public Works, Waterworks Division.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark Pestrella".

MARK PESTRELLA, PE

Director

MP:RB:lb

Enclosures

c: Chief Executive Office (Chia-Ann Yen)
County Counsel (Warren Wellen)
Executive Office

ASSET PURCHASE AGREEMENT
SATIVA WATER SYSTEM

This Asset Purchase Agreement ("**Agreement**") is made and entered into as of this ____ day of _____, 20____, ("**Effective Date**") by and between Suburban Water Systems, a California corporation ("**Buyer**" or "**Suburban**"), and the County of Los Angeles, a corporate body and politic ("**Seller**" or "**County**"). Buyer and Seller may be referred to individually as a "Party" or together as the "Parties." The Parties agree as follows:

1. **RECITALS**. The Parties enter into this Agreement with reference to the following:
 - A. The Sativa Los Angeles County Water District (the "**Sativa District**") owned and operated the Sativa Water System, consisting of water delivery pipelines, water appurtenances, hydrants, service laterals, interconnections, hydropneumatics tanks, chemical dosing equipment, groundwater well, office, equipment, and storage buildings, and other facilities and properties necessary to provide domestic water service to approximately 1,600 water service connections located within a residential area in the unincorporated community of Willowbrook and three small non-contiguous areas within the City of Compton ("**Sativa Water System**").
 - B. On June 1, 2018, the California State Water Resources Control Board ("**SWRCB**") issued Compliance Order No. 04_22_18R_003 to the Sativa District, wherein the SWRCB determined that the Sativa District had violated the California Safe Drinking Water Act.
 - C. On September 28, 2018, Governor Jerry Brown signed Assembly Bill 1577, thereby enacting California Health & Safety Code § 116687 ("**H&S Code § 116687**") which, among other things, authorized the dissolution of the Sativa District, the appointment of an "administrator" and "successor agency" for the Sativa District, and certain liability protections for the administrator, successor agency, and any water corporation that acquired the Sativa Water System.
 - D. Pursuant to H&S Code § 116687, on October 31, 2018, the SWRCB appointed County as the administrator of the Sativa District and, on November 1, 2018, County assumed full administrative, managerial, and financial control of the Sativa District.
 - E. On February 13, 2019, the Local Agency Formation Commission for County of Los Angeles ("**LAFCO**") adopted Resolution No. 2019-02RMD ("**LAFCO Resolution**") which, among other things (1) dissolved the Sativa District and (2) appointed County as the "successor agency" for the Sativa District, succeeding to all of the rights, duties and obligations of the Sativa District with respect to enforcement, performance, or payment of outstanding bonds or other contracts and obligations of the Sativa District and winding up the affairs of the Sativa District

pursuant to Government Code §§ 56886(m) and 57451(c) and subject to H&S Code § 116687, including the power to exchange, sell, or otherwise dispose of all property, real and personal, of the Sativa District.

- F. On September 11, 2019, County issued a request for proposals, RFP No. BRC0000114 (the "**RFP**"), along with a Bidders Notebook, soliciting proposals for interested and qualified bidders to purchase the assets associated with the Sativa Water System as described in, and subject to the terms set forth in, the RFP.
- G. In response to the RFP, Buyer submitted a proposal to County dated November 12, 2019 which included an offer to enter into an interim Operations and Maintenance Agreement (the "**O&M Agreement**") whereby Suburban would provide operations and maintenance services to County with respect to the operations of the Sativa Water System pending the Closing of the Contemplated Transactions. The Parties contemplate entering into such an O&M Agreement contemporaneously with the execution of this Agreement.
- H. By letter dated December 3, 2019, County informed Buyer that it had elected Buyer as the preferred bidder and that it was prepared to enter into negotiations with Buyer regarding the terms of this Agreement.
- I. On May 29, 2020, the Parties entered into an Exclusive Negotiation Agreement ("**ENA**") to negotiate the terms of this Agreement and thereafter began negotiations regarding the terms of this Agreement as well as the terms of the O&M Agreement.
- J. Based on the Parties' negotiations, County desires to sell, and Buyer desires to purchase, all of the assets associated with the Sativa Water System, including the Water Rights, as such assets are described in greater detail in Exhibit A attached hereto (collectively, the "**Acquired Assets**"), subject to the terms and conditions set forth in this Agreement.
- K. The SWRCB's Division of Drinking Water ("**DDW**") has circulated a draft of a new operating permit for the Sativa Water System ("**DDW Permit**") that identifies deficiencies with the Sativa Water System that require correction. Upon issuance of the final DDW Permit, the SWRCB would thereafter rescind Compliance Order No. 04_22_18R_003. A copy of the draft DDW Permit is attached hereto as Exhibit B.

2. **DEFINITIONS; RULES OF CONSTRUCTION.**

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Agreement. Capitalized terms have the meanings assigned to them. For purposes of this Agreement and the other documents executed in connection herewith, the following "Rules of

Construction" apply, unless specifically indicated to the contrary: (i) wherever from the context it appears appropriate, each term stated in either the singular or plural includes the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender include the masculine, the feminine and the neuter; (ii) the term "or" is not exclusive; (iii) the term "including" (or any form thereof) is not limiting or exclusive; (iv) the terms "hereof," "herein" and "herewith" and words of similar import are, unless otherwise stated, construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; (v) all references to statutes and related regulations include any amendments of same and any successor statutes and regulations as well as all rules and regulations promulgated thereunder, unless the context otherwise requires; and (vi) all references to any instruments or agreements, including references to any of the documents executed in connection herewith, include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

"Accounting Firm" means an independent accounting firm of national or regional standing, mutually selected by the Parties.

"Acquired Assets" means all of the assets associated with the Sativa Water System, including the Water Rights, as such assets are described in greater detail in Exhibit A attached hereto, including any third party warranty that remains in effect with respect to the Acquired Assets and is transferable.

"Actual Knowledge of County" or "County's Actual Knowledge" and similar terms mean the actual knowledge, or knowledge that would have been obtained after due inquiry, with respect to any matter, of any of the following Persons: (1) Russ Bryden; (2) Sami Kabar; and (3) Pedro Campos (during the period in which he has been employed by the County).

"Affiliate" means, (i) with respect to Buyer, SouthWest Water Company and each of its subsidiaries and (ii) with respect to County, the Los Angeles County Department of Public Works.

"Allocation" means a reasonable and supportable allocation of the Purchase Price and the Capex Reimbursement among the Acquired Assets in accordance with Code § 1060 and the Treasury regulations thereunder (and any similar provisions of state or local Law, as appropriate).

"Assumed Contracts" means those Contracts arising from or related to the Sativa Water System or the Acquired Assets to which County is a party, under which County may have any rights or by which County or the Sativa Water System is bound, and all bids, quotations and proposals therefor, each as set forth in Exhibit C, which will be assumed by Buyer.

"Bill of Sale" means a bill of sale, in the form of Exhibit D attached hereto.

"Board of Supervisors" means the Board of Supervisors of the County of Los Angeles.

"Business Day(s)" means any day other than (i) Saturday or Sunday, or (ii) any other day on which County's offices are permitted or required to be closed.

"Business Records" mean the following books and records which are in the possession of County and are related to, used or held for use in connection with the Sativa Water System: (i) Permits for the operation of the Sativa Water System; (ii) repair and maintenance records with respect to the Acquired Assets; (iii) billing and accounts receivable information concerning the revenue and collections of the Sativa Water System; (iv) accounts payable reports for the Sativa Water System; and (v) such other information as is reasonably available to County. In no event shall Business Records include any attorney work product produced for County or attorney-client communications between County and legal counsel.

"Buyer" or "Suburban" means Suburban Water Systems.

"Capex Reimbursement" is defined in Section 3.B.

"Closing" means the closing of the Contemplated Transactions.

"Closing Date" means the date on which the Closing occurs.

"Closing Proration List" is defined in Section 0.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations and other guidance promulgated thereunder.

"Confidential Information" means (i) proprietary information not available to the general public concerning the business and financial affairs with respect to a Party hereto or its Affiliates, (ii) analyses, compilations, forecasts, studies and other documents prepared on the basis of such proprietary information by the Parties or their agents, representatives, any Affiliate, employees or consultants, (iii) any information clearly marked as "Confidential" by the disclosing Party or (iv) information covered by the Common Interest Doctrine as set forth in the Parties' ENA.

"Consent" means any approval, consent, ratification, waiver or other authorization.

"Contemplated Transactions" means the transactions contemplated by this Agreement and the other Transaction Documents.

"Contract" means any agreement, contract, obligation, legally binding commitment or undertaking (whether written or oral and whether express or implied).

"County" or "Seller" means the County of Los Angeles.

"CPUC" means the California Public Utilities Commission.

"CPUC Decision" means an Order from the CPUC approving the Contemplated Transactions.

"Customers" means the customers being provided water service by the Sativa Water System.

"Encumbrance" means any charge, claim, community property interest, condition, easement, equitable interest, encumbrance, lien, mortgage, option, pledge, security interest, right of first refusal, right of way, servitude or restriction of any kind, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership, or any repayment obligation under any grant.

"Environment" means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental Law" means any Law relating to pollution or protection of human health, safety, the environment, or natural resources, including any Occupational Safety and Health Law, or Law relating to releases or threatened releases of Hazardous Materials into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport or handling of Hazardous Materials.

"Final Proration List" is defined in Section 0.

"GAAP" means Generally Accepted Accounting Principles as promulgated by the Governmental Accounting Standards Board.

"Governmental Authority" means any (i) nation, state, county, city, village, district or other jurisdiction of any nature, (ii) federal, state, local, municipal, foreign or other government, (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal), (iv) multi-national organization or body or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"Grant Funding" means all federal, state and local grant funding that is actually received by County in connection with the funding of capital improvements to the Sativa Water System, either as an advance or reimbursement for the costs of installing such capital improvements.

"Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

"Improvements" means all buildings, structures, fixtures, building systems and equipment, and all components thereof, including the roof, foundation, load-bearing walls, and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing, and other building systems, environmental control, remediation, and abatement systems, sewer, storm, and waste water systems, irrigation and other water distribution systems, parking facilities, fire protections, fencing, surface improvements, security, and surveillance systems, and telecommunications, computer, wiring, and cable installations, included in the Real Property.

"Interim Period" means that period between the Effective Date and the Closing.

"Law" means any law, rule, regulation or ordinance of any federal, foreign, state or local Governmental Authority or other provisions having the force or effect of law, including all judicial or administrative Orders and determinations, and all common law.

"Liability" means any liability, indebtedness or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of a Person.

"Material Adverse Effect" means any event, fact, change, development, or occurrence (each, an "Effect") that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to the business, assets, Liabilities (contingent or otherwise), prospects, operations or condition (financial or otherwise) of the Sativa Water System and/or the Acquired Assets.

"O&M Agreement" is defined in Section 0.

"Occupational Safety and Health Law" means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator.

"Ordinary Course of Business" means, with respect to the Sativa Water System, only the ordinary course of water utility operations customarily engaged in by County with respect to the Sativa Water System, consistent with past practices, and specifically does not include (a) activity (i) involving the purchase or sale of the Sativa Water System, or (ii) that requires approval by the Board of Supervisors, or (b) the incurrence of any Liability for any tort or any breach or violation of or default under any Contract or Law.

"Permit" means any approval, Consent, license, permit, waiver, franchise, registration, exemption, certificate or other authorization or approval issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law, and all pending applications therefor and amendments, modifications and renewals thereof.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, cooperative, estate, trust, association, organization, labor union or other entity or Governmental Authority.

"Proceeding" means any action, application, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Proration Amounts" is defined in Section 0.

"Purchase Price" means Eleven Million Eight Hundred Thousand (\$11,800,000), adjusted as provided pursuant to Sections 0 (Prorations).

"Real Property" means those parcels of real property and those easements or any rights-of-way used or held for use in the operation of the Sativa Water System, together with all fixtures, fittings, buildings, structures and other Improvements erected therein or thereon.

"Receivables" mean all receivables (including notes, accounts receivable, loans receivable and advances) arising from or related to the Sativa Water System.

"Records" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Release" means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment of Hazardous Materials, whether intentional or unintentional.

"Tax" means all taxes, charges, withholdings, fees, duties, levies, or other like assessments including, without limitation, income, gross receipts, ad valorem, value added, excise, personal property, real property, sales, employment, withholding, social security, Pension Benefit Guaranty Corporation premium, environmental (under

Section 59A of the Code), occupation, use, service, service use, license, payroll, franchise, transfer and recording taxes, fees and charges, windfall profits, severance, customs, import, export, employment or similar taxes, charges, fees, levies or other assessments, imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or any other basis, and shall include any interest, fines, penalties, assessments, or additions to tax resulting from, attributable to, or incurred in connection with any such Tax or any contest or dispute thereof, and including any Liability for the Taxes of another Person under Treasury Regulation § 1.1502-6 (or any similar provisions of state, local, or foreign Law), as transferee or successor, by Contract or otherwise.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to, or required to be filed in connection with any Taxes, including any schedule or attachment thereto and including any amendment thereof.

"Title Company" means First American Title Company.

"Transaction Documents" means this Agreement, the Bill of Sale, the Water Rights Assignment, and all other documents, certificates, assignments and agreements executed and/or delivered in connection with this Agreement in order to consummate the Contemplated Transactions, as the same may be amended, restated, modified or otherwise replaced from time to time.

"Water Rights" means the adjudicated water rights included as part of the Acquired Assets and set forth on Exhibit A.

"Water Rights Assignment" means the Assignment Agreement from County to Buyer conveying the Water Rights, substantially in the form of Exhibit E attached hereto.

3. AGREEMENT TO SELL AND PURCHASE; CONSIDERATION.

- A. Agreement to Sell.** County agrees to sell, transfer, convey and assign to Buyer, and Buyer agrees to purchase and accept from County, upon the terms and subject to the conditions set forth in this Agreement, the Acquired Assets, free and clear of all Encumbrances that have been placed on the Acquired Assets by County.
- B. Consideration.** The consideration for the Acquired Assets will be: (1) the Purchase Price (as adjusted by the Proration Amounts) and (2) the Capex Reimbursement. At Closing, Buyer will pay to County an aggregate amount equal to (i) the Purchase Price (as adjusted by the Proration Amounts) and (ii) the Capex Reimbursement, by wire transfer of immediately available funds in accordance with wire transfer instructions to be provided by County to Buyer at least ten (10) days before the Closing Date. County is receiving no compensation resulting from the disposal of any grant financed plant.

C. Prorations.

1. Generally, all operating income and operating expenses of the Sativa Water System shall be adjusted and allocated between the Parties to the extent necessary to reflect the principle that all such income and expenses attributable to the operation of the Sativa Water System on or before the Closing Date shall be for the account of County, and all income and expenses attributable to the operation of the Sativa Water System after the Closing Date shall be for the account of Buyer. No later than five (5) Business Days prior to the Closing, County shall provide Buyer with an itemized list of all sums to be credited or charged (the "**Proration Amounts**") against the account of Buyer, on the one hand, and of County, on the other hand, with a brief explanation in reasonable detail of the credits or charges, consistent with Exhibit F (the "**Closing Proration List**"). At Closing, the Purchase Price shall be increased to the extent any Proration Amounts result in a credit to the account of County or a charge to the account of Buyer and decreased to the extent any Proration Amounts result in a credit to the account of Buyer or a charge to the account of County.
2. The allocations and prorations to be made pursuant to this Section 0 shall be computed in a manner that is consistent with the assumptions, categories, classifications, judgments and allocation, valuation and estimation methodologies set forth on Exhibit [F]. If the Closing occurs during a monthly operating period, the Proration Amounts for such period will be allocated on a per diem basis through the date of Closing to the County and following the date of Closing to the Buyer. To the extent not inconsistent with the express provisions of this Agreement, the allocations made pursuant to this Section 0 shall be made in accordance with GAAP. Such prorations shall include all: (i) assessments, (ii) utility expenses, (iii) liabilities and obligations under the Assumed Contracts, (iv) rents, (v) deferred revenue from customers and prepayments, (vi) customer deposits and advances in aid of construction, and (vii) all other expenses and obligations attributable to the ownership and operation of the Sativa Water System that straddle the period before and after the Closing Date.
3. Within sixty (60) days following the Closing Date, or such later date as shall be mutually agreed to by County and Buyer, Buyer shall prepare and deliver to County a proposed final version of the Closing Proration List (the "**Final Proration List**"). The Final Proration List shall become final and binding upon the Parties ninety (90) days following delivery thereof (the "**Review Period**"), unless County gives written notice of its disagreement with the Final Proration List (the "**Notice of Disagreement**") to Buyer prior to the end of the Review Period. The Notice of Disagreement shall specify in reasonable detail the nature of any disagreement so asserted, indicating

each disputed item, together with the amount thereof, and the basis for County's disagreement therewith. If a Notice of Disagreement is given to Buyer prior to the expiration of the Review Period, then the Final Proration List (as revised in accordance with clause (i) or (ii) below) shall become final and binding upon the parties on the earlier of (i) the date the Parties resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement or (ii) the date any disputed matters are finally resolved in writing by the Accounting Firm. Within 15 days after the Final Proration List becomes final and binding on the Parties pursuant to the preceding sentence, the Parties shall compute an adjusted Purchase Price pursuant to subsection (1) using the Final Proration List in lieu of the Closing Proration List. If the adjusted Purchase Price is greater than the Purchase Price computed pursuant to subsection (1) at the Closing, Buyer shall pay the difference to County. If the adjusted Purchase Price is less than the Purchase Price computed pursuant to subsection (1) at the Closing, County shall pay the difference to Buyer. If County disagrees with the Final Proration List determined by Buyer or with any other matter arising out of this Section 0, and the Parties cannot within 30 days resolve the disagreement themselves, the Parties will refer the disagreement to the Accounting Firm, whose decision shall be final. Each Party shall have an additional 30 days from the end of the prior 30-day period to submit their respective positions and any relevant supporting materials. Each of Parties shall pay one-half of the fees and expenses of the Accounting Firm.

D. Capex Reimbursement.

1. Consistent with Section 3.B., and subject to Section 3.D.3, at Closing, Buyer will pay to County the amount of County's actual and documented capital expenditures, minus the amount of Grant Funding ("**Capex Reimbursement**"), for Interim Period Capital Improvements (as defined in Section 3.F): (i) that have been completed as of the Closing; (ii) for which County has received all anticipated Grant Funding; and (iii) the grant application process for any anticipated Grant Funding has concluded.
2. No later than twenty (20) Business Days before the Closing, County shall deliver to Buyer County's proposed Capex Reimbursement, along with sufficient information and documentation supporting the calculation, including documentation relating to any applicable Grant Funding. Within sixty (60) days following the Closing Date, or such later date as shall be mutually agreed to by County and Buyer, Buyer shall prepare and deliver to County a proposed final version of the Capex Reimbursement ("**Final Capex Reimbursement**"). The Review Period, the Notice of Disagreement, and the dispute resolution process set forth in Section 3.C.3 for the Final Proration List shall apply equally to the Final Capex Reimbursement. A Notice of Disagreement may include a dispute as to whether any cost item is a reimbursable capital expenditure.

3. If an Interim Period Capital Improvement has not been completed as of the Closing and/or anticipated Grant Funding for an Interim Period Capital Improvement has not been received by County as of the Closing ("**Post-Closing County Capex Project**"), County and Buyer will cooperate to supervise the completion of each such Post-Closing County Capex Project in accordance with the Contract(s) for such project. County shall be responsible for paying all amounts due under such Contract(s), subject to Buyer reimbursing County for the actual and documented capital expenditures for each such project minus the Grant Funding. Upon (i) the completion of each such Post-Closing County Capex Project, (ii) County's receipt of all anticipated Grant Funding for the project, and (iii) the conclusion of any grant application process for Grant Funding for such Post-Closing County Capex Project:
- (i) County shall timely pay all amounts properly due under the Contract(s) for the project.
 - (ii) County shall provide Buyer with a reimbursement request for each such improvement, with sufficient information and documentation to support the calculation, including copies of invoices and documentation relating to any applicable Grant Funding.
 - (iii) If Buyer disputes County's calculation of the reimbursement amount for any Post-Closing County Capex Project, including whether any cost item is a reimbursable capital expenditure, Buyer shall provide a notice of dispute within 60 calendar days of its receipt of County's reimbursement request and supporting documentation and information. The resolution of any such dispute shall be resolved in accordance with the dispute resolution process set forth in Section 3.C.3 for the Final Proration List. Buyer shall pay any undisputed portion of County's reimbursement request within 60 calendar days of its receipt of County's reimbursement request and supporting documentation and information.
 - (iv) County will take all necessary steps to promptly transfer and assign title and ownership of the completed improvement to Buyer, along with all rights attendant thereto, including any contractor warranties.
- E. Allocation. Buyer must prepare the Allocation in consultation with the County, which will be binding upon the Parties. The Parties must report, act, and file Tax Returns in all respects and for all Tax purposes consistent with the Allocation. No Party can take any Tax position (whether in audits, Tax Returns, or otherwise) that is inconsistent with or contrary to the Allocation. In the event that the Allocation is disputed by any Governmental Authority, the Party receiving notice of such dispute will promptly notify the other Party, and the Parties will consult in good faith as to how to resolve such dispute in a manner consistent with the Allocation.

F. Capital Improvements.

1. Interim Period Capital Improvements. The County may invest in capital improvements to the Sativa Water System during the Interim Period as necessary to comply with applicable Laws (including, without limitation, the DDW Permit) and/or to provide for the reasonable and prudent operation of the Sativa Water System ("**Interim Period Capital Improvements**"). The County will consult with Buyer in advance with respect to the scope, design and cost of Interim Period Capital Improvements except for any improvements that are undertaken on an emergency basis. The purpose of such consultation will be to (i) coordinate any Interim Period Capital Improvements with Suburban's plan for DDW Permit compliance measures and capital improvements following the Closing; and (ii) harmonize accounting for costs and expenditures for Interim Period Capital Improvements between the County accounting system and Sections 5 and 6 of the "Utility Plant Accounts – Instructions" of the Uniform System of Accounts for Class A Water Utilities prescribed by the CPUC. Notwithstanding clause (ii) above, the Capex Reimbursement for Interim Period Capital Improvements will not be subject to compliance with the CPUC's Uniform System of Accounts rules.
2. Post-Closing Compliance Measures. Based on the joint review of the draft DDW Permit and discussions between the County, Suburban and DDW staff, the County and Suburban acknowledge for planning purposes that Suburban intends to undertake the capital improvements specified on Exhibit G as necessary to bring the Sativa Water System into compliance with the DDW Permit following the Closing. Notwithstanding the foregoing, the aforementioned list is for planning purposes and the actual implementation of such capital improvements will be subject to DDW and CPUC approval. The current estimate of the aggregate cost of such compliance measures is \$8.5 million.

G. Operational Covenants. As additional consideration for the purchase of the Acquired Assets, Buyer has committed to the following operational covenants in connection with the application to the CPUC for approval of the Contemplated Transactions and after the Closing:

1. Rate Plan. Subject to CPUC approval: (i) during the period from the Closing through December 31, 2023, Buyer will charge Customers \$62.00 per month as the base charge for a single unit (and multiples of that amount for each additional unit or portion thereof consistent with the rate schedule described in Section 8.U) along with applicable surcharges, credits, taxes and franchise fees; (ii) beginning on January 1, 2024, the Sativa Water System will be incorporated into and subject to the CPUC-approved tariffs for Buyer's Whittier / La Mirada Buyer service area, including the rates applicable to Buyer's Whittier / La Mirada Buyer service area along with

applicable surcharges, credits, taxes and franchise fees; and (iii) in the event that the Closing occurs after January 1, 2024, the Sativa Water System will be incorporated into and subject to the CPUC-approved tariffs for Buyer's Whittier / La Mirada Buyer service area, including the rates applicable to Buyer's Whittier / La Mirada Buyer service area along with applicable surcharges, credits, taxes and franchise fees immediately after Closing ("**Rate Plan**").

2. Compliance With Laws And Permits Applicable To The Sativa Water System. Buyer will comply with all Laws applicable to the Sativa Water System, including: (1) SWRCB Compliance Order No 4_22_18R_003, to the extent it has not been rescinded after the issuance of the DDW Permit; (2) the DDW Permit and any other permit or compliance order issued by the DDW or the SWRCB; and (3) other federal and state laws, regulations, and standards applicable to the Sativa Water System, including those requiring the installation of meters by January 1, 2025 [Public Utility Code § 781].

4. **CONVEYANCE OF TITLE; ASSIGNMENTS.**

- A. Upon the terms and subject to the conditions of this Agreement, at the Closing, County agrees to convey by quit claim deed to Buyer fee simple title to the Real Property constituting a portion of the Acquired Assets. As set forth below, the Real Property is to be transferred to Buyer in "AS-IS, WHERE-IS" condition.
- B. Upon the terms and subject to the conditions of this Agreement, at the Closing, County agrees to transfer, convey and assign the remainder of the Acquired Assets in accordance with the applicable Transaction Document, including the tangible assets that do not constitute Real Property via the Bill of Sale and the Water Rights via the Water Rights Assignment.

5. **ASSUMPTION OF LIABILITIES.**

- A. Buyer assumes no obligations and liabilities of any kind or nature whatsoever related to, arising from, or associated with the Sativa Water System prior to Closing except the following: (i) Sativa Water System customer deposits in the approximate amount of \$148,475.77; and (ii) any Assumed Contracts.
- B. For the avoidance of all doubt, Buyer assumes no obligations with respect to any other current or long-term Liabilities, including, but not limited to any obligations with respect to (x) the Loan Agreement dated January 11, 2019 by and between the County and the Sativa District ("**County Loan**") and (y) the Installment Sale Agreement dated June 1, 2017 by and between Municipal Finance Corporation and the Sativa District ("**MFC Loan**"). At Closing, County shall pay off all outstanding amounts due under the MFC Loan and the County Loan.

6. CLOSING. Closing will occur at Buyer's place of business or such other place or by such other means (e.g., e-mail, PDF or facsimile and overnight delivery of original execution documents) as is agreed to by the Parties at 10:00 A.M., Pacific time, on (a) a date that is not more than [15] Business Days after the date on which all of the conditions precedent in this Agreement are satisfied or waived or, if Buyer elects, the final day of County's billing period of which such date is a part; or (b) such other date, time and/or place as the Parties may agree upon in writing.

7. CLOSING OBLIGATIONS. In addition to any other documents to be delivered under other provisions of this Agreement, at Closing the Parties must deliver:

- A. All documents required to be executed by such Party including, without limitation, the Transaction Documents;
- B. All documents and Consents (including, without limitation, the CPUC Decision) from Governmental Authorities and third parties necessary to ensure that Buyer will continue to have the same full rights with respect to the Acquired Assets as County had before the Closing; and
- C. All other documents required to be delivered by a Party or reasonably requested by Buyer or County to be delivered at or before the Closing.
- D. Joint escrow instructions to the Closing agent effectuating the Closing (i.e., title company) that provide for the full payment of the outstanding balances due under the Encumbrances listed in Exhibit H.

8. COUNTY'S REPRESENTATIONS AND WARRANTIES. County makes the following representations and warranties to Buyer, each of which is true and correct as of the date of this Agreement and will be true and correct as of the Closing:

- A. County is the successor-in-interest to Sativa District and owner of the Acquired Assets, including the Real Property, pursuant to the authority granted under H&S Code § 116687 and the LAFCO Resolution.
- B. Pursuant to the authority granted under H&S Code § 116687 and the LAFCO Resolution, County is authorized to own and operate the Sativa Water System and the Acquired Assets.
- C. County has not placed any Encumbrance on the Acquired Assets, including the Real Property, since County's appointment as the administrator of the Sativa Water System and none of the Acquired Assets are on loan by County to any third party. To the County's Actual Knowledge, all Encumbrances on the Acquired Assets, including the Real Property, are set forth in Exhibit H attached hereto.

- D. County has delivered to Buyer all documents in its possession regarding the location of water supply sources, pump stations and storage facilities, mains and service connections used in connection with the Sativa Water System and necessary to be used in connection with the Sativa Water System and does not have notice of any actual or pending dispute or claim that any portion of the Sativa Water System is located on real property for which there is not a valid easement, right of way or other real property interest. County has not investigated and makes no representation with respect to the existence, validity or scope of any easements for the Sativa Water System that are located on private property.
- E. Except as otherwise provided by applicable Law (e.g., the United States Bankruptcy Code), this Agreement constitutes the legal, valid and binding obligation of County, enforceable against County in accordance with its terms.
- F. Subject to the CPUC Decision, the County has the absolute and unrestricted right, power and authority to complete the Contemplated Transactions. County's representatives are authorized to execute and perform this Agreement and the other Transaction Documents. This Agreement has been, and the other Transaction Documents will be, duly executed and delivered by County.
- G. Except as otherwise provided by applicable Law (e.g., the California Public Utilities Code and the LAFCO Resolution), no additional Consents are required to complete the sale, transfer and assignment of the Acquired Assets.
- H. There is no unpaid Tax, levy or assessment against the Acquired Assets, including the Real Property (except for Encumbrances relating to Taxes not yet due and payable), nor is there pending or threatened any condemnation Proceeding against the Acquired Assets.
- I. The Acquired Assets are and have been treated as exempt from real, personal property, and *ad valorem* Taxes in the County of Los Angeles and any other jurisdiction in which the Acquired Assets are or have been located, however, this exemption is due to the status of Sativa District and County as public agencies and this would not apply to Buyer.
- J. County is, and at all times in which it has owned the Acquired Assets has been, a corporate body and politic existing in accordance with applicable Law, including the California Constitution and California Government Code, and is a legal subdivision of the State of California. For purposes of federal Law, County is considered a political subdivision of the State of California and an organization described in Sections 115 and 170(c)(1) of the Code.
- K. County has received Grant Funding relating to some of the Acquired Assets. As to any Grant Funding the County received, (i) all work or other requirements that were required to be taken and completed have been taken and completed (or caused to be taken and completed) by County; (ii) County's performance with respect to such

grants has not been challenged or questioned by nor is, to County's knowledge, the subject of any audit or investigation; and (iii) all such grants have been completed or are in the process of being completed and will be completed prior to the Closing.

- L.** No general obligation bonds were pledged for use by the Sativa Water System.
- M.** County has provided Buyer with copies of all Contracts that currently exist affecting the Acquired Assets to which County is a party or by which County is bound in its role as the successor agency to the Sativa District.
- N.** To County's Actual Knowledge, the operation of the Sativa Water System and the use of the Acquired Assets by County has been in compliance with all Laws applicable thereto.
- O.** To County's Actual Knowledge, the operation of the Sativa Water System and the use of the Acquired Assets by County has been in compliance with all Environmental Law applicable thereto. County has no basis to expect nor has it received any actual or threatened Order, notice or other communication of any actual or potential violation or failure to comply with any applicable Law.
- P.** Except for SWRCB Compliance Order No. 04_22_18R_003, there are no known pending or, to County's Actual Knowledge, threatened claims, Encumbrances or other restrictions of any nature, resulting from any alleged violation of applicable Law affecting the Acquired Assets. There are no Proceedings, either pending or, to County's Actual Knowledge, threatened, against County involving the operation or ownership of the Sativa Water System or any of the Acquired Assets, which would reasonably be expected to have an adverse effect on the Sativa Water System or any of the Acquired Assets.
- Q.** To County's Actual Knowledge and except as otherwise disclosed to Buyer, there are no Hazardous Materials present on or in the Real Property, except those used in connection with the operation of the Acquired Assets in accordance with applicable Environmental Law.
- R.** To County's Actual Knowledge, there has been no Release or threat of Release of any Hazardous Materials at or from the Acquired Assets.
- S.** County has provided Buyer with a complete and correct list of all Permits used by County in the current ownership, operation and/or maintenance of the Sativa Water System, which is attached hereto as Exhibit I, as well as the draft DDW Permit. Such Permits and the draft DDW Permit constitute all those necessary for the ownership, operation and maintenance of the Sativa Water System by the County and are all valid and subsisting and in full force and effect.

- T. County has made reasonable efforts to provide copies of the Business Records in its possession with respect to the Sativa Water System. Business Records created by County in the period following its appointment as administrator of the Sativa Water System are true and correct and represent actual transactions entered into by the County with respect to the Sativa Water System; however, County makes no representation or warranty concerning the accuracy of Business Records that were created prior to its appointment as administrator of the Sativa Water System.
- U. Attached hereto as Exhibit J is a true and correct schedule of (i) the current billing rates for the Sativa Water System, which provides for a flat rate for water service based on the number of dwelling units, with garage conversions and other ancillary buildings being treated as half or additional units; and (ii) the number of customers who are currently invoiced in each rate category as of November 23, 2020.
- V. County has provided financial statements in the Bidders Notebook with the RFP for periods prior to its appointment as administrator of the Sativa Water System and has shared internally prepared financial projections and budget information concerning the Sativa Water System that are estimates only. County makes no representations or warranties concerning the accuracy of the financial statements in the Bidders Notebook and any proforma financial information created by County is provided for the information of Buyer only and is subject to Buyer's independent review and verification.
- W. Buyer will not be responsible for any funding or continued operation of any health insurance policies, employee benefit plans, retirement plans, individual retirement accounts, or 401(k) accounts related to, managed by, belonging to, or held for the benefit of, County, its officers, employees, subcontractors, agents, or any other third parties.
- X. The Sativa Water System buildings, plants, and structures installed or constructed by County after its appointment as Administrator and Successor Agency of the Sativa District are structurally sound, in good operating condition and repair, and adequate for the uses to which they are being put, and none of such buildings, plants, or structures is in need of maintenance or repairs other than ordinary, routine maintenance that is not material in nature or cost.
- Y. County, as the successor agency to the Sativa District under H&S Code § 116687, has taken and will take all necessary steps to ensure that the "interim operation period" under H&S Code § 116687 has been or will be extended until the Closing Date.
- Z. County is self-insured for any and all risks and liabilities associated with its ownership and operation of the Sativa Water System, does not maintain commercial insurance for such risks and liabilities, and intends to continue to be self-insured for such risks and liabilities until Closing.

9. COUNTY'S DISCLOSURE AND DISCLAIMER. The information provided in the RFP and the Bidders Notebook are solely for the evaluation of the Sativa Water System and County makes no representation or warranty concerning the accuracy of such information. Furthermore, County makes no representation or warranty with respect to the accuracy of any documents, Business Records or information provided by County that was in existence prior to County's appointment as the administrator of the Sativa Water System. Notwithstanding the foregoing, County has not knowingly provided any information that is untruthful or inaccurate concerning the Sativa Water System.

10. "AS IS" SALE.

- A. EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF COUNTY EXPRESSLY SET FORTH IN SECTIONS 8 AND 9 OF THIS AGREEMENT OR ANY OTHER DOCUMENT DELIVERED BY COUNTY TO BUYER AT THE CLOSING (COLLECTIVELY, THE "**COUNTY REPRESENTATIONS, WARRANTIES AND COVENANTS**")**, IT IS UNDERSTOOD AND AGREED THAT COUNTY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE ACQUIRED ASSETS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE ACQUIRED ASSETS WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS RELATING TO THE ACQUIRED ASSETS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF COUNTY TO BUYER, OR ANY OTHER MATTER OR THING REGARDING THE ACQUIRED ASSETS.
- B. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING COUNTY SHALL CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE ACQUIRED ASSETS "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT FOR THE COUNTY REPRESENTATIONS, WARRANTIES AND COVENANTS.**
- C. BUYER ACKNOWLEDGES AND AGREES THAT BUYER WILL HAVE HAD THE OPPORTUNITY TO CONDUCT PRIOR TO CLOSING SUCH INVESTIGATIONS OF THE ACQUIRED ASSETS, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY BUYER AS TO THE CONDITION OF THE ACQUIRED ASSETS AND THE EXISTENCE OR NONEXISTENCE OF ANY HAZARDOUS MATERIALS ON, UNDER, ABOUT OR DISCHARGED FROM THE ACQUIRED ASSETS WHICH MAY NOW OR IN THE FUTURE REQUIRE INVESTIGATION, REMEDIATION OR OTHER CURATIVE ACTION UNDER ANY ENVIRONMENTAL LAWS, AND, EXCEPT FOR THE COUNTY**

REPRESENTATIONS, WARRANTIES AND COVENANTS, BUYER WILL RELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF COUNTY OR COUNTY'S AGENTS OR EMPLOYEES WITH RESPECT THERETO.

- D. UPON CLOSING, EXCEPT FOR AND SUBJECT TO THE COUNTY REPRESENTATIONS, WARRANTIES AND COVENANTS, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY THE BUYER'S INVESTIGATIONS, AND, EXCEPT FOR ANY CLAIM FOR BREACH BY COUNTY OF ANY OF THE COUNTY REPRESENTATIONS, WARRANTIES AND COVENANTS, AND EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), BUYER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED COUNTY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST COUNTY AT ANY TIME BY REASON OF OR ARISING OUT OF (I) ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, (II) ANY MAINTENANCE OR OTHER WORK DONE OR PERFORMED ON OR ABOUT THE ACQUIRED ASSETS, INCLUDING, WITHOUT LIMITATION, ANY SUCH WORK PERFORMED FOR COUNTY OR ANY OF THE OTHER COUNTY, (III) VIOLATIONS OF ANY APPLICABLE LAWS INCLUDING ANY ENVIRONMENTAL LAWS) AND/OR (IV) ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE ACQUIRED ASSETS (HEREINAFTER COLLECTIVELY THE "**RELEASED CLAIMS**"). BUYER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION OR REMOVAL OF HAZARDOUS MATERIALS OR OTHER ENVIRONMENTAL CONDITIONS ON THE ACQUIRED ASSETS BE REQUIRED AFTER THE DATE OF CLOSING, EXCEPT FOR ANY CLAIM OF BREACH BY COUNTY OF ANY COUNTY REPRESENTATIONS, WARRANTIES AND COVENANTS AND EXCEPT FOR ANY OTHER EXCLUDED CLAIMS, BUYER'S CLAIMS AGAINST COUNTY ARISING FROM SUCH MATTERS ARE INCLUDED IN RELEASED CLAIMS. NOTHING CONTAINED HEREIN WILL PREVENT BUYER FROM ENFORCING ANY THIRD PARTY WARRANTY THAT HAS BEEN ASSIGNED BY COUNTY IN CONNECTION WITH THE ACQUISITION OR CONSTRUCTION OF ANY OF THE ACQUIRED ASSETS.
- E. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS SECTION 10 OR ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL COUNTY BE RELEASED FROM, NOR SHALL RELEASED CLAIMS INCLUDE OR BE DEEMED TO INCLUDE: (A) THE BREACH OF ONE OR MORE OF THE COUNTY REPRESENTATIONS, WARRANTIES AND COVENANTS; (B) THE

FRAUD, WILLFUL MISCONDUCT OR OTHER TORTIOUS CONDUCT OF COUNTY, ANY PARTY COMPRISING COUNTY, OR ANY OF THEIR REPRESENTATIVES, AGENTS, OR CONTRACTORS; (C) COUNTY'S BREACH OF ANY AGREEMENT BETWEEN COUNTY AND A THIRD PARTY; AND (D) ANY PERSONAL INJURY AND RELATED ACQUIRED ASSETS DAMAGE WHICH OCCURRED WITH RESPECT TO THE SATIVA WATER SYSTEM AND THE ACQUIRED ASSETS PRIOR TO THE CLOSING AND WAS NOT CAUSED BY THE ACT OR OMISSION OF BUYER OR REPRESENTATIVE OF BUYER) (COLLECTIVELY, THE "**EXCLUDED CLAIMS**").

- F. AS PART OF THE PROVISIONS OF THIS SECTION, BUT NOT AS A LIMITATION THEREON, BUYER HEREBY ACKNOWLEDGES AND AGREES THAT THE MATTERS RELEASED HEREIN UPON CLOSING ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND BUYER HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, RULES OR REGULATIONS. WITHOUT LIMITING THE FOREGOING, BUYER WAIVES THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY.

Buyer initials _____

11. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer makes the following representations and warranties to County:

- A. Buyer is a duly organized and validly existing corporation in good standing under the laws of the state of California and has the power and authority to own, lease and operate its assets and properties.
- B. Buyer has all necessary corporate approvals to purchase and accept the Acquired Assets.
- C. Except as otherwise provided by applicable Law (e.g., the United States Bankruptcy Code), this Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

- D. Buyer has completed, and is satisfied with, all inspections of the Acquired Assets. No additional investigation or due diligence is required to complete performance of this Agreement and the other Transaction Documents.
- E. Neither the execution or delivery of this Agreement nor the consummation of the Contemplated Transactions will result in: (i) a violation of or a conflict with any provision of the articles of incorporation or the bylaws of Buyer; (ii) a material breach of or default under any term, condition or provision of any Contract to which Buyer is a party, or an event which, with the giving of notice, lapse of time, or both, would result in any such breach or default; or (iii) a material violation of any applicable Law, Order, judgment, writ, injunction, decree or award or any event which, with the giving of notice, lapse of time, or both, would result in any such violation.

12. ACCOUNTS RECEIVABLE.

- A. Before the date hereof, County provided Buyer with a list of customers under seal and marked as "confidential" in accordance with Government Code § 6254.16 together with an aging schedule relating to such customers' accounts. These Receivables, together with any such Receivables arising between such date and the Closing, are (to the extent not yet paid in full and in excess of one year remaining before expiration under the applicable statute of limitations) valid. Except to the extent paid before Closing, the Receivables are and will be current and fully collectible. County will update the customer list, the list of Receivables and the related aging schedule at least five Business Days before Closing.
- B. From and after the date of this Agreement through and until the Closing, County will undertake its reasonable best efforts to collect all Receivables, whether now existing or accrued after the date hereof, in a timely manner (subject to any restrictions on collection as a result of the Covid-19 pandemic).

13. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER. Buyer's obligations to consummate the Contemplated Transactions are subject to the satisfaction in full, unless expressly waived in writing by Buyer, of each of the following conditions:

- A. Buyer must secure the following, in form and substance satisfactory to Buyer:
 - 1. All necessary regulatory approvals from the CPUC, including the CPUC Decision in form and substance acceptable to Buyer; and
 - 2. Any other applicable Consents from public entities or third parties.
- B. Buyer must receive (or the Title Company will commit to deliver) one or more ALTA 2006 Standard Owner's Policy(s) of title insurance for the Real Property.
- C. A Material Adverse Effect has not occurred.

- D. Prior to the Closing, Buyer shall have conducted, at its sole cost, an ASTM Phase 1 Environmental Site Assessment covering the Real Property, which assessment shall conclude that no recognized environmental conditions, that could reasonably be expected to cost more than \$25,000 to remediate, were found in connection with the Real Property, and that no further investigation of the Real Property is warranted.
- E. All items to be delivered at Closing under the Transaction Documents have been properly executed by duly authorized persons and have been delivered to Buyer.
- F. Each of County's representations and warranties in this Agreement shall have been true and correct in all material respects as of the date of this Agreement and will be true and correct in all material respects as of the time of the Closing as if then made (except to the extent that any such representation and warranty expressly speaks as of a particular date, in which case such representation and warranty shall be true and correct in all material respects as of such date).
- G. The covenants and obligations that County is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects.
- H. County has promptly taken such actions as may have been reasonably requested by Buyer to secure the release of all Encumbrances that have been placed on the Acquired Assets by County or which County has agreed to satisfy through escrow, in each case, in substance and form reasonably satisfactory to Buyer

14. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF COUNTY. County's obligations to consummate the Contemplated Transactions are subject to the satisfaction in full, unless expressly waived in writing by County, of each of the following conditions:

- A. Buyer must secure the following, in form and substance satisfactory to County:
 - 1. All necessary regulatory approvals from the CPUC, including the CPUC Decision in form and substance acceptable to County; and
 - 2. Any other applicable Consents from public entities or third parties.
- B. All items to be delivered at Closing under the Transaction Documents have been properly executed by duly authorized persons and have been delivered to County.
- C. Each of Buyer's representations and warranties in this Agreement shall have been true and correct in all material respects as of the date of this Agreement and will be true and correct in all material respects as of the time of the Closing as if then made (except to the extent that any such representation and warranty expressly speaks as of a particular date, in which case such representation and warranty shall be true and correct in all material respects as of such date).

- D. The covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects.

15. COMPLIANCE WITH APPLICABLE REQUIREMENTS AND GOVERNMENTAL APPROVALS. Except for: (i) the CPUC Decision; (ii) County's consent and approval; and (iii) any obligation that must be performed by County under applicable Law; Buyer is solely responsible for complying, at Buyer's sole expense, with all applicable Laws, and obtaining all Consents of Governmental Authorities and third persons in connection with the consummation of the Contemplated Transactions.

16. COOPERATION. Upon the terms and subject to the conditions of this Agreement, the Parties will use their respective reasonable efforts to cooperate with each other in connection with, and will use reasonable efforts to take or cause to be taken and do or cause to be done, any actions required to be taken under applicable Law to perform this Agreement as promptly as practicable. Before the Closing, the Parties will proceed expeditiously and in good faith to make such filings, including, without limitation, filings with the CPUC, and take such other actions as may be reasonably necessary to satisfy the conditions to Closing. Any and all filing fees in respect of such filings must be paid by Buyer. From and after the Closing, the Parties will do such acts and execute such documents and instruments as may be reasonably required to make effective the Contemplated Transactions. County agrees to cooperate with Buyer to ensure a proper transition of all customers with respect to billing and customer service activities, including meter reading. Buyer will take the lead in obtaining the required regulatory approvals with respect to the Contemplated Transactions.

17. CONDUCT OF BUSINESS.

- A. During the Interim Period, County will (a) carry on the operation and maintenance of the Acquired Assets in compliance with applicable Law; (b) not introduce any materially new method of management or operation of the Sativa Water System without first obtaining the prior written consent of Buyer; (c) use best efforts to preserve the Acquired Assets; (d) conserve the goodwill and relationships of the customers, suppliers, and others having business relations with the Sativa Water System; (e) maintain supplies at a level which is sufficient to operate the Sativa Water System in accordance with past practice; (f) maintain the Acquired Assets in substantially the condition currently existing, normal wear and tear excepted; (g) preserve all Permits; and (h) maintain all Business Records. Notwithstanding the foregoing, if the Parties enter into the O&M Agreement, subject to the terms of such O&M Agreement, some or all of the obligations set forth in this Section 17(A) may be assumed by Buyer to the extent expressly assumed by Buyer therein.

B. Without limiting the generality of the foregoing, during the Interim Period, the County shall not, without first obtaining the prior written consent of Buyer:

1. transfer, sell, lease, encumber, or otherwise dispose of all or any portion of any Acquired Assets;
2. terminate, cancel, or materially amend or modify any Assumed Contract, or fail to exercise any renewal right with respect to any Contract that by its terms would otherwise expire (other than in the ordinary course of business);
3. commence, release or settle any Proceeding or waive any claims or rights of value, in each case, attributable to the Acquired Assets;
4. enter into any transaction or take any other action that could be reasonably expected to cause or constitute a breach of any representation or warranty made by the County in this Agreement;
5. voluntarily waive or release any material right with respect to any Acquired Assets;
6. grant or suffer to exist any Encumbrance on or with respect to any of the Acquired Assets that would not be fully released and discharged on or prior to Closing;
7. install capital improvements into the Sativa Water System during the Interim Period except for Interim Period Capital Improvements;
8. make any regulatory or other filings of any kind with any Governmental Authority, except in the ordinary course of business consistent with past practices or as required in connection with the consummation of the Contemplated Transactions consistent with this Agreement; or
9. enter into any agreement or commitment to take any action prohibited by this Section 0.

18. RELEASE OF ENCUMBRANCES. County will promptly take such actions as may be reasonably requested by Buyer to secure the release of all Encumbrances that have been placed on the Acquired Assets by County or which County has agreed to satisfy through escrow, in each case, in substance and form reasonably satisfactory to Buyer.

19. PUBLIC RECORDS; RETENTION OF RECORDS. Buyer acknowledges that County is a public entity subject to the Public Records Act (Government Code §§ 6250-6276.48) and that this Agreement, and documents ancillary to this Agreement, must generally be disclosed upon request, except to the extent protected from disclosure under applicable Laws, including the Common Interest Doctrine. All records subject to this

Agreement that are not delivered to Buyer upon Closing will be retained by County in accordance with the Public Records Act and County's retention schedule.

20. LIMITED INDEMNIFICATION. Notwithstanding anything to the contrary in this Agreement:

- A. Each Party will indemnify and hold harmless the other Party from any and all costs, Liabilities, claims and expenses, including those from death or injury to any Person or from a loss or damage to any real, personal or other property, to the extent arising from any claim against a Party arising from the breach of such Party's representations, warranties, covenants, or obligation set forth in this Agreement or in any certificate, document, writing or instrument delivered by a Party pursuant to this Agreement.
- B. County will indemnify, defend and hold harmless Buyer from all claims or Liabilities of County, or the Sativa Water System, which arise out of the operation of the Sativa Water System from the time of County's appointment as the administrator of the Sativa District pursuant to H&S Code § 116687, including any claims covered by H&S Code § 116687(f).
- C. Buyer will indemnify, defend and hold harmless County from all claims or Liabilities which arise in connection with the ownership and operation of the Sativa Water System, the Assumed Contracts and the Acquired Assets arising on or after the date of Closing.
- D. To be indemnified and held harmless under this Agreement, a Party must promptly notify the other Party of the existence of any matters to which that Party's indemnity obligations apply. Upon demand by a Party pursuant to this Section, the other Party must defend at its own expense with mutually acceptable counsel any such matter; provided that the Party seeking indemnification and defense also has the right to fully participate in the defense and consent to any settlement or compromise.
- E. It is expressly understood and agreed that this Section will survive termination of this Agreement.

21. NO TRANSFER AT ODDS WITH LAW. Notwithstanding anything to the contrary contained herein, nothing in this Agreement will be deemed to require the conveyance, assignment or transfer of any Acquired Asset that by operation of applicable Law cannot be conveyed, assigned, transferred or assumed.

22. DISPUTE RESOLUTION. Any dispute arising between County and Buyer regarding this Agreement will first be attempted to be resolved through informal mediation between the respective Parties' designated representatives. If the dispute cannot be resolved pursuant to this Section 22, then the dispute will either be resolved in accordance

with the specific dispute resolution mechanisms set forth in this Agreement or in accordance with the rights and remedies available under applicable Law.

23. CONFIDENTIALITY.

- A.** Before Closing and for a period of three (3) years after the Closing Date, each Party will ensure that all Confidential Information which such Party or any of its respective officers, directors, employees, counsel, agents, or accountants may have obtained, or may hereafter obtain, from the other Party (or create using any such information) relating to the financial condition, business plans and strategies, results of operations, the Sativa Water System, properties, assets, Liabilities or future prospects of the other Party, any Affiliate of the other Party or any customer or supplier of such other Party or any such Affiliate will not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case, without the prior written Consent of the other Party; provided, however, that the restrictions of this sentence do not apply (i) as may otherwise be required by Law, including the requirements of the California Public Records Act unless the Confidential Information is subject to an exemption from the California Public Records Act, (ii) to the extent such Confidential Information has otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders and professionals for the purpose of obtaining financing of such transactions.
- B.** In the event of termination of negotiations or failure of the Contemplated Transactions to close for any reason whatsoever, each Party promptly will destroy or deliver to the other Party and will not retain any documents, work papers and other material (and any reproductions thereof) obtained by each Party or on its behalf from such other Party or its subsidiaries as a result of this proposal or in connection therewith, whether so obtained before or after the execution hereof, and will not use any information so obtained and will cause any information so obtained to be kept confidential and not used in any way detrimental to such other Party.

24. TERMINATION. This Agreement can be terminated at any time before the Closing only upon the following:

- A.** By mutual written Consent of County and Buyer;
- B.** By either Party, upon written notice to the other Party, if the Closing has not occurred on or before the date that is 90 days after the effective date of the CPUC Decision (unless extended in writing by both Parties); provided, however, that the right to terminate this Agreement under this Section is not available to any Party whose breach under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date;

- C. By either Party, upon written notice to the other Party, if there is any Law that makes consummation of the Contemplated Transactions illegal, or if any court of competent jurisdiction or other competent Governmental Authority issues a judgment, Order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions, and such statute, rule, regulation, Order, decree or injunction or other action becomes final and non-appealable; provided, however, that the Party seeking to terminate this Agreement pursuant to this Section must have used all commercially reasonable efforts to remove such judgment, injunction, Order or decree;
- D. By Buyer, if a Material Adverse Effect occurs;
- E. By County, if the Parties have not filed an application with the CPUC for the approval of the Contemplated Transactions described herein within one hundred eighty (180) days of the Effective Date;
- F. By Buyer, if the conditions to Closing set forth in Section 13 have not been satisfied within three (3) years of the filing date of the Parties' application to the CPUC to approve the Contemplated Transactions; provided, however, that the right to terminate this Agreement under this Section is not available to any Party whose breach under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date; or
- G. By County, if the conditions to Closing set forth in Section 14 have not been satisfied within three (3) years of the filing date of the Parties' application to the CPUC to approve the Contemplated Transactions; provided, however, that the right to terminate this Agreement under this Section is not available to any Party whose breach under this Agreement has caused or resulted in the failure of the Closing to occur on or before such date,
- H. By either Party, within 90 days after the effective date of the CPUC Decision, by written notice to the other Party if this Agreement and the Contemplated Transactions are not approved by the CPUC in a manner acceptable to the Parties.

25. TAX REPORTING AND WITHHOLDING – NON-FOREIGN STATUS.

- A. The Foreign Investment in Real Property Tax Act of 1980, as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (County) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-resident corporation or partnership.
- B. County advises Buyer that County is NOT a "foreign person" for the purposes of Section 1445 (as may be amended) of the Code, and that, in accordance with the provisions of Section 1445 of the Code, County must execute an affidavit under

penalty of perjury setting forth County's name, address, federal tax identification number, and certifying that County is not a "foreign person" in accordance with the provisions of the Code.

26. AMENDMENT AND MODIFICATION. No amendment, modification or supplement of any provision of this Agreement will be effective unless the same is in writing and is signed by the Parties.

27. ASSIGNMENTS. Neither Party may assign or transfer any of its rights or obligations under this Agreement to any other person without the prior written consent of the other Party, which will not be unreasonably delayed, conditioned or withheld. If an assignment is approved, all provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the Parties and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

28. PUBLIC ANNOUNCEMENTS. Neither Party may issue any press release or make any public statement with respect to this Agreement or the Contemplated Transactions without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except as may be required by Applicable Law, in which case the Party required to publish such press release or public announcement shall allow the other Party a reasonable opportunity to comment on such press release or public statement to the extent practicable.

29. CAPTIONS; CONSTRUCTION. Captions contained in this Agreement and any table of contents preceding this Agreement were inserted as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

30. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed by the Parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties notwithstanding that all the Parties are not signatories to the same counterpart. In accordance with Government Code § 16.5, the Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by electronic transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.

31. ENTIRE AGREEMENT. Except for the confidentiality provisions of the ENA, this Agreement (together with its Exhibits) and the other Transaction Documents constitute the entire agreement between the Parties pertaining to the conveyance of the Acquired Assets and supersede all prior agreements, letters of intent, understandings, negotiations

and discussions of the Parties, whether oral or written. All of the Exhibits attached to this Agreement are incorporated herein by reference.

32. CONSISTENCY. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the attached Exhibits; this Agreement supersedes any conflicting provisions.

33. GOVERNING LAW. This Agreement and the rights and obligations of the Parties are governed by and construed and interpreted in accordance with the Laws of the State of California applicable to Contracts made and to be performed wholly within California, without regard to choice or conflict of laws rules.

34. LEGAL FEES, COSTS. Except as otherwise provided, all legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement are to be paid by the Party incurring such costs and expenses. Furthermore, in the event of any dispute and/or legal action arising from an interpretation and/or performance of any of the provisions of this Agreement, each party will bear its own attorneys' fees and costs.

35. NOTICES. All notices, Consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person or by e-mail (with confirmation of receipt); (ii) three Business Days after being deposited in the United States mail, first class postage prepaid; or (iii) in the case of overnight courier services, one Business Day after delivery to the overnight courier service with payment provided, in each case addressed as follows:

If to Seller/County:

County of Los Angeles
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803
Tel: (626) 300-3300
Email: rbryden@dpw.lacounty.gov
Attn: Russ Bryden
Assistant Deputy Director

If to Owner:

Suburban Water Systems
1325 N. Grand Avenue, Suite 100
Covina, CA 91724
Telephone: 626-543-2500
E-mail: CGott@swwc.com
Attn: President

With a copy to (which shall not constitute notice):

Office of the County Counsel
County of Los Angeles
500 West Temple Street
Los Angeles, CA 90012
Tel: (213) 974-9668
Email:
wwellen@counsel.lacounty.org

With a copy to (which shall not constitute notice):

Suburban Water Systems
1325 N. Grand Avenue, Suite 100
Covina, CA 91724
Telephone: 626-543-2500
E-mail: Legal@swwc.com
Attn: General Counsel

Attn: Warren Wellen
Principal Deputy County
Counsel

or to such other address as any Party hereto may designate by notice to the other Parties in accordance with the terms of this Section.

36. SEVERABILITY. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

37. SPECIFIC PERFORMANCE; ENFORCEMENT COSTS. The Parties agree that failure to perform this Agreement cannot be adequately relieved by pecuniary compensation. Accordingly, either Party may compel specific performance of this Agreement in accordance with Civil Code §§ 3384, 3386, or 3389, and any other applicable Law.

38. THIRD PARTY BENEFICIARIES. This Agreement and every provision herein is generally for the exclusive benefit of Buyer and County and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of Buyer's or County's obligations under this Agreement.

39. WAIVER OF COMPLIANCE; CONSENTS. Any failure of a Party to comply with any part of this Agreement may be waived by the other Party only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition does not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

40. VENUE. Exclusive venue for any action involving this agreement will be in the Superior Court for the County of Los Angeles or the Federal District Court for the Central District of California.

41. WAIVER OF JURY TRIAL. To the fullest extent permitted by law, each of the Parties irrevocably waives all right to trial by jury in any action, suit, proceeding or counterclaim arising out of or relating to this Agreement or any of the Contemplated Transactions.

[Remainder of page intentionally left blank; signature page attached.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SUBURBAN WATER SYSTEMS

COUNTY OF LOS ANGELES

By _____
Craig Gott

By _____
Director of Public Works

APPROVED AS TO FORM:

RODRIGO A. CASTRO-SILVA
County Counsel

By _____
Deputy

EXHIBITS LIST

- A.** Acquired Assets
- B.** DDW Permit
- C.** Assumed Contracts
- D.** Form of Bill of Sale
- E.** Form of Water Rights Assignment
- F.** Prorations
- G.** Post-Closing Compliance Measures
- H.** Encumbrances
- I.** Permits
- J.** Schedule of Billing Rates and Number of Customers Per Rate Category

EXHIBIT A – ACQUIRED ASSETS

EXHIBIT B – DDW PERMIT

EXHIBIT C – ASSUMED CONTRACTS

EXHIBIT D – FORM OF BILL OF SALE

EXHIBIT E – FORM OF WATER RIGHTS ASSIGNMENT

EXHIBIT F – PRORATIONS

This Exhibit F sets forth certain assumptions, categories, classifications, judgments and allocation, valuation and estimation methodologies that the Parties agree will be used in connection with allocations and prorations under Section 3.C. of the Agreement. Capitalized terms used but not defined herein shall have the meaning given such terms in the Agreement.

1. Utility Expenses; Accounts Payable. To the extent not paid by County as of the Closing, County will retain the obligation for payment of all trade accounts that were incurred on or prior to the Closing Date for work performed or materials delivered for the benefit of the Sativa Water System on or prior to the Closing Date. Buyer shall be responsible for all trade payables that arise or accrue for the benefit of the Sativa Water System after the Closing Date. Any amounts payable that cover both periods before and after the Closing shall be prorated based upon number of days.
2. Unbilled Revenue. Revenue earned by the Sativa Water System during any period (or portion thereof) ending on the Closing Date shall be allocated to County and revenue earned by the Sativa Water System after the Closing Date shall be allocated to Buyer.
3. Prepayments. Vendor and customer prepayments shall be allocated between County and Buyer at Closing. County will identify and schedule such prepayments to Buyer prior to the Closing, so that vendor prepayments that benefit Buyer after Closing shall be allocated to County and customer prepayments that relate to periods after Closing shall be allocated to Buyer.
4. Accounts Receivable. Buyer shall purchase and pay for all the accounts receivable of the Sativa Water System accrued as of the Closing Date, whether or not billed, except that Buyer will not pay any amounts for accounts receivable that are 60 days or more past due. County shall provide Buyer with a schedule of such accounts receivable prior to the Closing. It will be Buyer's responsibility to collect such accounts receivable.
5. Inventory. Buyer shall purchase all inventories of the System owned as of the Closing Date. County shall provide Buyer, to the extent practical, with a schedule of all inventory at the Closing no later than five (5) Business Days prior to the Closing.
6. Other Expenses. If any of the items described in Section 3.C. of the Agreement or this Exhibit F that cannot be apportioned at the Closing because of the unavailability of information as to the amounts which are to be apportioned or otherwise, or are incorrectly apportioned at the Closing or subsequent thereto, such items will be estimated as of the Closing and then adjusted, as necessary, pursuant to Section 3.C. of the Agreement.

EXHIBIT G – POST-CLOSING COMPLIANCE MEASURES

Pursuant to Section 3.F.2. of the Agreement, the below lists the capital improvements Suburban intends to undertake as necessary to bring the Sativa Water System into compliance with the DDW Permit following the Closing. This list is for planning purposes only and the actual implementation of such capital improvements will be subject to DDW and CPUC approval.

Project Description	Total
Misc. System Replacements (Services, Valves, Hydrants, Pipes)	522,800
SCADA Integration	75,000
Steel Reservoir	725,032
Site 4 Pump Station	497,283
Well 3 Transfer Switch and Mobile Generator	190,000
Stockwell Pipeline	917,000
Vesta Pipeline	534,000
Willowbrook Pipeline	1,277,000
Jack and Bore	535,000
Wilmington Pipeline	107,000
Wayside Pipeline	234,000
Vesta Pipeline	310,000
Lucien Pipeline	183,000
Meter purchase and installation	851,932
Drill and Equip Well 6	1,500,000
Total	\$8,459,047

EXHIBIT H – ENCUMBRANCES

EXHIBIT I – PERMITS

EXHIBIT J
SCHEDULE OF BILLING RATES AND
NUMBER OF CUSTOMERS PER RATE CATEGORY

Rates
1 unit = \$67.84
1.5 units = \$101.76
2 units = \$135.68
2.5 units = \$169.60
3 units = \$203.52
3.5 units = \$237.44
4 units = \$271.36

# Dwelling Units	# of Accounts
1	1017
1.5	15
2	191
2.5	2
3	24
3.5	1
4	1
1 + Utility Tax	42
2 + Utility Tax	7
3 + Utility Tax	1
Total Accounts	1301

SATIVA POTABLE WATER SYSTEM
OPERATION AND MAINTENANCE AGREEMENT

This Potable Water System Operations and Maintenance Agreement ("**Agreement**") is entered into as of _____, 2021 (the "**Effective Date**") by and between THE COUNTY OF LOS ANGELES, a political subdivision of the State of California ("**County**") and SUBURBAN WATER SYSTEMS, a California corporation ("**SWS**"). The County and SWS may be referred to individually as "Party" and the County and SWS may be referred to collectively as the "Parties."

RECITALS

- A. The Sativa Los Angeles County Water District (the "**Sativa District**") owned and operated the Sativa Water System, consisting of water delivery pipelines, water appurtenances, hydrants, service laterals, interconnections, hydropneumatic tanks, chemical dosing equipment groundwater well(s), office, equipment, and storage buildings, and other facilities and properties necessary to provide domestic water service ("**Water System**") to approximately 1,600 water service connections located within a residential area in the unincorporated community of Willowbrook and three small non-contiguous areas within the City of Compton ("**Sativa Service Area**").
- B. On June 1, 2018, the California State Water Resources Control Board ("**SWRCB**") issued Compliance Order No. 04_22_18R_003 (the "**Compliance Order**") to the Sativa District, wherein the SWRCB determined that the Sativa District had violated the California Safe Drinking Water Act.
- C. On September 28, 2018, Governor Jerry Brown signed Assembly Bill 1577 enacting California Health & Safety Code § 116687 ("**H&S Code § 116687**") which, among other things, authorized the dissolution of the Sativa District, the appointment of an "administrator" and "successor agency" for the Sativa District, and certain liability protections for the administrator, successor agency, and any water corporation that acquired the Water System.
- D. Pursuant to H&S Code § 116687, on October 31, 2018, the SWRCB appointed the County as the administrator of the Sativa District and, on November 1, 2018, the County assumed full administrative, managerial, and financial control of the Sativa District.
- E. On February 13, 2019, the Local Agency Formation Commission for County of Los Angeles ("**LAFCO**") adopted Resolution No. 2019-02RMD ("**LAFCO Resolution**") which, among other things (1) dissolved the Sativa District and (2) appointed the County as the "successor agency" for the Sativa District, succeeding to all of the rights, duties and obligations of the Sativa District with respect to enforcement, performance, or payment of outstanding bonds or other contracts and obligations of the Sativa District and winding up the affairs of the Sativa District

pursuant to Government Code §§ 56886(m) and 57451(c) and subject to H&S Code § 116687, including the power to exchange, sell, or otherwise dispose of all property, real and personal, of the Sativa District. On March 19, 2019, LAFCO dissolved the Sativa District.

- F. On September 11, 2019, the County issued a request for proposals, RFP Number BRC0000114 (the "**RFP**"), along with a Bidders Notebook, soliciting proposals for interested and qualified bidders to purchase the assets associated with the Water System as described in, and subject to the terms set forth in, the RFP.
- G. In response to the RFP, SWS submitted a proposal to the County dated November 12, 2019 which included an offer to enter into an interim Operations & Maintenance Agreement whereby Suburban would provide operations and management services to the County with respect to the operations of the Water System pending the approval of SWS's acquisition of the Water System.
- H. SWS currently operates domestic water systems in the nearby cities of Whittier and La Mirada ("**Existing SWS Operations**").
- I. By letter dated December 3, 2019, the County informed SWS that it had elected SWS as the preferred bidder and that it was prepared to enter into negotiations with SWS regarding the terms of an Operations and Maintenance Agreement as well as an APA.
- J. The County and SWS have entered into that certain Asset Purchase Agreement of even date herewith ("**APA**") pursuant to which SWS will acquire the Water System. The closing of the APA is subject to approval of the California Public Utilities Commission and the County desires to engage SWS to provide certain services in connection with the day to day operation and management of the Water System during the period commencing with the execution of this Agreement through the closing of the APA ("**Interim Period**").
- K. SWS is willing to provide services in connection with the operation and management of the Water System during the Interim Period on the terms and conditions set forth herein.
- L. The Parties agree that SWS, as the ultimate purchaser and operator of the Water System, is in a unique position to consistently operate and maintain the Water System during the Interim Period, and that no other third party provider could provide the consistent operation and management of the system, which is of tremendous benefit to the Water System ratepayers.
- M. The SWRCB's Division of Drinking Water ("**DDW**") has circulated a draft of a new operating permit for the Sativa Water System ("**DDW Permit**") that will identify deficiencies with the Sativa Water System that require correction and upon issuance of the final DDW Permit, the SWRCB would thereafter rescind Compliance Order No. 04_22_18R_003 . A copy of the draft DDW Permit is attached hereto as Exhibit [●].

NOW THEREFORE, for good and valid consideration, the Parties agree as follows:

**ARTICLE 1.
WATER SYSTEM OPERATION**

1.1 Water System Operation. SWS will provide the services described herein in connection with the day to day operation and management of the Water System using SWS staff to provide potable water service to customers within the Sativa Service Area consistent with regulatory standards and industry standard practices, including operating production wells, interconnections, electrical systems, and treatment chemical systems.

1.2 SWS Personnel.

- (a) **Licensed Operator.** The operation of the Water System will be conducted by SWS personnel who possess valid Water Distribution Operator and/or Water Treatment Operator licenses at an appropriate level for the Water System consistent with California drinking water regulations. The Chief Operator and Shift Operator will have no less than five (5) years of experience operating a domestic water system in the State of California. Any operator providing services under this Agreement with less than five (5) years of experience operating a domestic water system in the State of California will be supervised by an operator with at least five (5) years of experience operating a domestic water system in the State of California. The identity and qualifications of all operators of the Water System will be provided to the County prior to the commencement of services hereunder. The identity and qualifications of SWS staff added during the Interim Period will be provided to County five (5) business days prior to that employee commencing services on the Water System. All required licenses and certifications will remain in good standing throughout the Interim Period.
- (b) **Office Staff.** SWS will provide the services of at least one full time employee who will be responsible for the operation of the administrative offices of the Water System, including staffing the offices during normal business hours, providing billing and collection services, handling customer service and other day to day accounting functions in accordance with the terms of this Agreement. The County will provide oversight with respect to certain accounting functions that are carried out by SWS office staff, but SWS will at all times be responsible for supervision of such office staff. Office staff may be SWS employees or temporary employees.
- (c) **Field Personnel.** The daily operation and management of the Water System will be handled by SWS field personnel who service the Existing Suburban Operations, subject to the addition of field personnel as necessary for SWS to carry out its obligations pursuant to this Agreement.

- (d) **Employees.** It is intended that the services provided by SWS personnel pursuant to this Agreement will be handled by employees and independent contractors of SWS who are under the direct supervision of SWS operators and management personnel. All SWS personnel shall be qualified, licensed to the extent required by law, and experienced in the duties assigned and consistent with qualification and experience which are typical for personnel operating and managing facilities such as the Water System. SWS shall retain sole authority, control and responsibility with respect to SWS personnel in connection with the performance of the services. SWS shall comply with all federal, state and local laws relating to labor and employment and shall exercise control over its personnel in a reasonable manner consistent with the intent and purpose of this Agreement. SWS will be solely responsible for the payment of all compensation, benefits and for the proper payment and withholding of all taxes in connection with SWS personnel. In no event will SWS personnel be entitled to claim any benefit or compensation as an employee of the County. SWS will be responsible for any employment related claims by SWS personnel and will indemnify and hold County harmless from any such claims. County shall have the right, with justifiable cause, to require the removal of any SWS personnel from providing services under this Agreement, including without limitation, any SWS personnel who engages in harassment or inappropriate behavior toward customers of the Water System, County employees or other SWS personnel.
- (e) **Subcontractors.** SWS may, with the consent of the County, subcontract specific tasks required under Articles 1 and 2, provided, however, that any such subcontractor will have the experience, licenses and certificates necessary to perform such tasks, will maintain insurance coverage consistent with the requirements of this Agreement and SWS will at all times remain responsible for all work performed by such subcontractors. In no event will the services to be provided by SWS personnel described in sections 1(a) and 1(b) be subcontracted.

1.3 Facilities Inspections. SWS shall provide for routine inspection of the Water System, and shall maintain a log that meets U.S. Government Accountability Office auditing standards, including the date, time, and operator's name performing each inspection, as a part of the County's permanent records. SWS shall have full and complete access to and right to monitor the Water System's supervisory control and data acquisition ("**SCADA**") system. SWS will perform monitoring required by State Water Resources Control Board, Division of Drinking Water ("**DDW**") regulations and any permits issued by DDW. All monitoring records will become a part of the County's permanent records.

1.4 Routine Custodial Duties. SWS will perform, on an as-needed basis, custodial tasks on distribution system and treatment equipment at the Water System, such as: wells; interconnections; hydropneumatic systems; pipes; services; meters; electrical systems; mechanical systems; chemical systems; and SCADA sensors.

All such custodial duties shall be as specified by SWS in an Operations and Management Plan. SWS will provide the County with an Operation and Management plan within sixty (60) days of the execution of this Agreement. The plan will not be inconsistent with either the respective equipment manufacturers specifications or the practices of the County Department of Public Works.

1.5 Water Quality Monitoring and Management. SWS shall perform the following activities related to monitoring and managing the distribution system water quality:

- (a) Verifying distribution system disinfectant residual using field testing equipment each business day;
- (b) Monitoring disinfectant levels reported on the SCADA system at least once per day on non-business days;
- (c) Routine water quality monitoring required by the California Code of Regulation or directed by DDW, including without limitation: Total Coliform Rule monitoring; routine groundwater/well monitoring; Disinfection Byproduct monitoring; other routine distribution system monitoring; and monitoring required by the Compliance Order;
- (d) Modifying system operation as needed to meet regulatory standards;
- (e) Flushing the distribution system to ensure the system meets regulatory and aesthetic standards; and
- (f) Drafting and distributing customer notifications relating to water quality, subject to prior review and approval by County.

1.6 Regulatory Liaison. SWS will be available for meetings with DDW representatives for sanitary surveys, and other regulatory inspections or meetings with regulatory agencies. This includes producing all Water System records available to SWS for inspection and review by such agencies.

1.7 Chemical Inventories. SWS will manage an inventory of chemicals routinely used in the operation of the Water System. Chemical inventories will be stored at Water System facilities in quantities sufficient to enable continuous operation of the Water System and adjusted in accordance with system demand, including when the Water System is purchasing treated water. All chemicals shall be appropriately stored and managed.

1.8 Compliance Actions and Reports. SWS will promptly prepare and submit operational and compliance reports required by DDW, the United States EPA, and any other local, state or federal agency in accordance with the filing deadlines of any such agencies. Monthly or quarterly DDW reports shall be submitted to the County for review and approval at least five (5) calendar days before the filing deadline. All other reports will first be submitted to the County for review and

approval at least ten (10) business days before the filing deadline. SWS will conduct system tests as necessary to report test results in accordance with all applicable agency rules and will communicate immediately with the County when any remedial actions are necessary.

1.9 Water System Repair Management.

- (a) SWS will respond to any disruption in normal Water System operations, including without limitation, reported or suspected leaks, loss of pressure, and abnormal SCADA system readings throughout the year regardless of the day or the time of day. SWS response time to reports of customer line failures that have disrupted potable water service will not exceed twenty-four (24) hours, subject to timely response pursuant to Section 1.9(b).
- (b) Except as set forth in Section 1.9(c), SWS will be responsible for managing the repair of all failures in the Water System, including without limitation: (i) customer service line leaks up to the corporation stop; (ii) repairs of main lines, interconnections, pumps, wells and other equipment that is part of the water distribution system; and (iii) repairs to the water treatment system. All repairs will be carried out by a licensed contractor that has been approved by the County and SWS in advance, or at the option of the County, by County waterworks crews. SWS will give the County prompt notice of any repair and County will respond as soon as reasonably practicable whether a County waterworks crew is available or a contractor should be used. SWS and the County may further agree on protocols for when a repair is to be handled by a contractor versus the County, provided, however, that SWS and the County will work to ensure that the repair of customer leaks is promptly resolved. SWS's responsibilities with respect to such repairs – whether the repairs are effectuated by contractors retained by the County or SWS, or by County waterworks crews – are: (1) to ensure such work is performed consistent with drinking water regulatory requirements, including the California Waterworks Standards; (2) to operate the water system such that repairs can be performed with minimal disruption to potable water service; (3) to draft and provide notice to customers where required by regulation, or where necessary under industry-standard potable water system operating practices; and (4) to conduct any sampling, water quality analyses, or other system operations necessary to ensure customers receive water meeting all regulatory and aesthetic standards with minimal disruption in service. Repairs by contractors that are supervised by SWS will be conducted using industry standard repair methods. Repairs that require digging, trenching or any other breach in a paved roadway, curb and gutter, or sidewalk will be filled with a temporary patch that allows vehicle traffic to traverse such roadway and reported to the County, which will be responsible for providing a permanent repair to the roadway, curb and gutter, or sidewalk.

- (c) The County will be responsible for any repair to the Water System that is determined to be a **Material Capital Repair**. For the purposes of this Agreement, a "**Material Capital Repair**" is a failure of a main line or other component of the water distribution system or water treatment system, including infrastructure and equipment (but not including customer service lines) that is reasonably expected to exceed Ten Thousand Dollars (\$10,000.00) in combined labor and material costs. SWS will promptly notify the County of any major capital repair and SWS and the County will coordinate on a response, including any temporary or emergency measures that are necessary to address the failure and restore potable water service. The County will be responsible for undertaking Material Capital Repairs at its sole cost and expense, with the cooperation of SWS. Notwithstanding the foregoing, if SWS reasonably undertakes a Material Capital Repair in response to an emergency that threatens the health and safety of customers of the Water System or the general public, the County will reimburse SWS for such costs.
 - (d) The County reserves the right at any time to take control of any repair of the Water System if the County is not satisfied that the response conducted by SWS is consistent with the obligations of SWS under this Agreement.
- 1.10 Flow Testing.** SWS staff will perform fire flow availability testing at the request of Water System customers that require a fire flow availability test report for County Fire permitting.
- 1.11 Underground Service Alert Marking.** SWS staff will perform underground service alert marking using available underground asset information from the Water System. SWS is not responsible for incorrect markings that are due to a lack of information, or poor-quality information, about buried underground utilities belonging to the Water System.
- 1.12 Compliance with Law.** All services provided by SWS pursuant to this Agreement will be performed in accordance with applicable federal, state and local laws, rules and regulations applicable thereto.
- 1.13 Operational Oversight and Control.** At all times during the Interim Period, the County will have the right to monitor and exercise oversight over the services being provided by SWS and determine, in its sole discretion, the adequacy of the operational and management processes that are the obligation of SWS under this Agreement. At any time that the County believes that such processes or the performance of SWS is inadequate to meet the standards that the County has set for the Water System, then the County will have the right to direct SWS to change such operational and management processes or to correct any deficiency in the performance of its obligations pursuant to this Agreement. If the change requested by the County is a change in the scope of the obligations of SWS pursuant to the terms of this Agreement that would result in additional cost or expense to SWS,

then the County and SWS will agree on a reasonable adjustment to the O&M Fee to take such increased cost into account.

- 1.14 Transition Period.** During the initial ninety (90) day period following the commencement of services by SWS, the County will maintain the services of an operator, at the expense of the County, to work with SWS to provide a smooth transition of the operation and management of the Water System and assist SWS with the periodic regulatory reporting described in this Article 1. The responsibility of the operator will be to provide information concerning the Water System and be a resource for SWS operators and field personnel.

ARTICLE 2. OTHER SERVICES

2.1 Billing and Accounting.

- (a) SWS will issue bills and related notices to customers monthly based on the Water System's current billing practices using the Water System's current stand-alone accounting system.
- (b) SWS will: receive payments from customers, whether from in-person payments, interactive voice response systems, telephone, or Internet-based payment; record payments; and provide an accounting to the County of all bills and receipts. SWS will deposit all Water System customer payments into a County bank account. SWS will not be able to withdraw from this account.
- (c) SWS will perform industry standard collection activities, including placing phone calls to delinquent customers, sending reminder notices, posting the property, and discontinuing service, as appropriate.
- (d) SWS will process the accounts payable for the goods and services which are included within the O&M Fee and shall be responsible for paying such accounts payable directly.
- (e) SWS will process the accounts payable for the reserved expenses and contracts that will be retained by the County as described in Schedule 2.1(e), including any amendments, extensions, other written agreements, or conduct that has the effect of extending the services or expenses described in Schedule 2.1(e). SWS shall submit such accounts payable for payment by the County in accordance with the payment review and approval processes that are imposed by the County from time to time. Nothing in this Section 2.1(e) shall preclude the parties from agreeing to shift responsibility for these services to SWS as an Increase in Service pursuant to Section 4.4. Any payments that are made from petty cash or accounts that are maintained separately for the Water System will require

approval and signature by the designated County representative. The initial designated representative of the County will be Sami Kabar.

- (f) All accounting and financial reports prepared or maintained by SWS shall conform to Government Accounting Standards Board or Generally Accepted Accounting Practices, as appropriate. All books and records relating to the finances of the Water System that are kept by SWS shall be made available for inspection or audit upon five (5) days' notice. All books and records described in Sections 2.1(a), (b), (d) and (e) will be maintained at the Water System office and will be subject to inspection and review at all times during normal business hours.

2.2 Customer Relations.

- (a) SWS will accept service calls, inquiries, and complaints from Water System customers, record each interaction, and dispatch an operator or other field staff to respond if warranted based on standard industry practices, regardless of the day or the time of day.
- (b) SWS will accept and process customer requests for new service, or to increase the size of a customer's existing service line, consistent with the County's rules and ordinances governing such requests and Sections 3.7 and 3.8 of this Agreement.

2.3 Community Engagement. SWS will hold community events and perform customer outreach and marketing activities to engage the Water System's community in the ongoing process to improve the reliability and quality of water service. SWS and County will agree on a set of general principles for community engagement and outreach prior to the commencement of such activities by SWS.

2.4 Meetings, Correspondence and Inquiries.

- (a) SWS will promptly respond to all correspondence and/or inquiries from the County.
- (b) SWS will issue monthly operating reports to County staff regarding the status of system operations. SWS will also meet with County staff on a routine basis to review such reports, and discuss other operating matters, including recommendations for operational improvements.
- (c) If requested, SWS representatives shall attend regularly scheduled County meetings or any other meeting, which have an agenda item pertaining to the operating the Water System.

2.5 Grounds Keeping and Property Maintenance. Except as otherwise specified on Schedule 2.1(e), SWS will be responsible for management and custodial oversight of Water System well sites, office, corporate yard, and other real property.

ARTICLE 3.
EXPENSES AND WORK EXCLUDED FROM SWS SERVICES

- 3.1 Purchase Water Costs.** County shall directly pay all costs for water purchased from other water purveyors in accordance with the contract between the County and such other water purveyors and all groundwater assessments from the Water Replenishment District.
- 3.2 Loan Payments.** County shall directly pay all payments required under the Municipal Finance Corporation loan and the County's loans to the Water District.
- 3.3 City of Compton Utility Users Tax:** County shall directly pay all payments due to the City of Compton for Utility Users Taxes collected from Sativa customers.
- 3.4 Corrective Action Plan Projects and Capital Expenditures.** County shall manage and directly pay for all work to complete capital improvements included in the Corrective Action Plan submitted to DDW in response to the Compliance Order.
- 3.5 Reserved Contracts.** County shall directly pay all accounts payable in connection with reserved expenses and contracts pursuant to Section 2.1(e).
- 3.6 Emergency Capital Expenditures.** The County will be responsible for the cost of all Material Capital Repairs or shall reimburse SWS for the cost of such expenditures to the extent permitted pursuant to Section 1.9(b).
- 3.7 Expansion of the Water System.** SWS will not be responsible for extensions or expansions of the Water System. If an extension or expansion is necessary to respond to proposed development or changes in regulatory requirements, SWS will inform the County in writing of its recommendations with respect to same and the decision whether to act on such recommendation will be in the sole discretion and at the sole cost of the County unless otherwise agreed with SWS pursuant to the APA.
- 3.8 Service Line Expenses.** SWS will not be responsible for installation, repair or replacement of customer service lines to the extent that the customer is responsible for such costs under current rules and regulations applicable to the Water System. Customers are responsible for making such repairs at their expense.
- 3.9 Damage Caused by Third Parties.** SWS will respond to repairs that are caused by a third party in the same manner as any other repair or emergency described in this Agreement, provided, however, that the County will be responsible for the full cost of repairing any damage that is caused by a third party and will reimburse SWS for same, regardless of whether the repair is a Material Capital Repair as defined in Section 1.9(b), or another type of repair. The County may seek reimbursement from the third party pursuant to its own process for self-insured claims.

- 3.10 **Unspecified Services.** Services not expressly included in Articles 1 and 2 are excluded unless specifically agreed to in writing pursuant to Section 4.6.

ARTICLE 4. COMPENSATION

- 4.1 **O&M Fee.** The cost of labor and materials for the services described in Article 1 (excluding Section 1.9(b)) and Article 2 is included in and will be paid by County to SWS in accordance with Section 4.3(a) ("**O&M Fee**"). The O&M Fee shall include all costs and expenses of SWS in carrying out such obligations unless this Agreement expressly provides for reimbursement of any such costs and expenses by the County.

4.2 **Repair Costs and Other Reimbursements.**

- (a) For any distribution system repairs managed by SWS pursuant to Section 1.9(b), if the Parties agree that SWS will manage an outside contractor to effect such work, the County will reimburse SWS at a fixed rate of \$6,500 per day, inclusive of the cost of third party contractors responding to the repair (including labor and materials).
- (b) County will reimburse SWS for all services provided or purchased, and related goods and equipment purchased, by SWS to perform emergency repairs or emergency capital replacements which are otherwise the responsibility of the County pursuant to Sections 1.9, 3.5 and 3.9.
- (c) County will reimburse SWS for any other cost or expense for which SWS is entitled to reimbursement pursuant to the terms of this Agreement, including any additional reimbursement items pursuant to Article 3 and Section 4.4.
- (d) Nothing in this Article 4 precludes the costs of Material Capital Repairs or other reimbursements from being subject to the Interim Capex Reimbursement provisions in the APA.

4.3 **O&M Fee Invoice and Cost Reimbursement Process.**

- (a) SWS shall invoice County Forty-Three Thousand Nine Hundred Twenty-Five Dollars (\$43,925.00) on a monthly basis for the O&M Fee, as well as services performed or expenses incurred that are eligible for reimbursement pursuant to Article 3 and this Article 4. SWS shall endeavor to submit its invoice on or before the 20th day of the month for the services and costs incurred for the prior month. Invoices should be addressed to:

County of Los Angeles
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803
Tel: (626) 300-3338
Email: skabar@dpw.lacounty.gov
Attn: Sami Kabar
Sr. Civil Engineer

- (b) If said invoices are provided as set forth above and if the County fails to issue a check to SWS to pay the undisputed invoiced amount within forty-five (45) days of the invoice date, County will pay to SWS, in addition to the amount owed, interest at a rate of one and one half percent (1.5%) per month until payment is received by SWS.

- 4.4 **Increase/Decrease in Service.** In the event either SWS or the County determines that any scope of services contemplated in this Agreement should be modified as a result of governmental regulations, unforeseen changes in the condition of the Water System, or the addition or subtraction of facilities to the Water System, SWS and the County agree to negotiate, in good faith, an appropriate change in the fees to be charged by SWS to the County with respect to the proposed modification in services. In the event the Parties are unable to reach a mutual agreement, then the Parties may retain a mediator to assist with the Parties coming to an appropriate change in the fees to be charged by SWS to the County regarding any proposed modification in services. The Parties shall each pay one-half of the cost for the mediator.

ARTICLE 5. COUNTY PERFORMANCE OBLIGATIONS

- 5.1 **Facility Access.** The County shall provide SWS use of the land, equipment, buildings, structures and facilities under ownership or control of County that are integral to the routine operation, or management of the Water System, except where by contract those facilities are under the management and control of a third party, including without limitation the interconnections between the Water System and other water purveyors.
- 5.2 **System Record Drawings.** The County shall provide SWS with as complete a set of record drawings as the County possesses of the Water System facilities to be operated and maintained by SWS under this Agreement.
- 5.3 **Water System Expansion.** The County shall be responsible for any design, financing and/or expansion of the Water System to meet customer growth or regulatory requirements.

ARTICLE 6.
INSURANCE, GUARANTIES, INDEMNITY AND LIMITATIONS

6.1 Insurance. SWS shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, insurance of the types and in the minimum amounts set forth in Schedule 6.1. through a combination of primary and excess coverages.

6.2 Catastrophic Damage to Water System.

- (a) SWS will not be required to repair or replace pursuant to Articles 1 and 2 of this Agreement any catastrophic damage to the Water System caused by flood, fire, explosion, riot, revolution, civil disturbance, war, acts of God, or similar catastrophic occurrences beyond the reasonable control of SWS. SWS will notify the County of such damage, both orally and in writing, as soon as possible after the damage occurs.
- (b) In such an event, SWS shall stabilize the Water System consistent with the Water System's Emergency Response Plan, and otherwise operate the Water System in a manner consistent with industry standards in light of the Water System's damaged condition.

6.3 Indemnity.

- (a) SWS agrees to defend, indemnify and hold harmless the County, its elected officials, officers, employees, agents and contractors, from all Damages which arises directly or indirectly from (i) the willful, intentional, reckless, or negligent (whether active, passive, or gross) acts or omissions of SWS, its agents, employees and contractors relating to the Water System; (ii) the failure of SWS to perform its obligations in accordance with the terms of this Agreement; and (iii) any claim or liability that is the responsibility of SWS pursuant to Section 1.2(d). SWS obligations under this Section 6.3(a)(i) shall proportionally not apply to the extent that the damage or claim is the result of the contributory negligence of the County.
- (b) County agrees to defend, indemnify and hold harmless SWS, its directors, officers, employees, agents and contractors, from all Damages which arises directly or indirectly from the willful, intentional, reckless, or negligent (whether active, passive, or gross) acts or omissions of the County, its agents, employees and contractors relating to the Water System. The County's obligations under this Section 6.3(b) shall proportionally not apply to the extent that the damage or claim is the result of the contributory negligence of SWS.
- (c) The County will satisfy and hold harmless SWS from all Damages of the County, or the Water System, existing prior to or at the Effective Date, arising out of transactions or commitments entered into, or any state of facts existing, prior to, or on the Effective Date, so long as, and to the extent that,

such claims or liabilities relate to or arise out of the operation of the Water System from the time of the County's appointment as the administrator of the Sativa District pursuant to H&S Code § 116687, including any claims covered by H&S Code § 116687(f).

- (d) Definition of Damages. The term "Damages" shall mean all liabilities, demands, claims, actions or causes of action (including without limitation, actions for personal injury, property damage and wrongful death) regulatory, legislative or judicial proceedings or investigations, assessments, levies, taxes, losses, fines, penalties, damages, costs and expenses, including, without limitation, reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability.
- (e) Notice; Third Party Claims.
 - (1) Whenever any claim shall arise for indemnification under this Section 6.3, the party entitled to indemnification ("Indemnified party") shall promptly notify, in writing, the other party or parties from whom indemnity may be sought under this Section 6.3 ("Indemnifying party"), of the claim and, when known, the facts constituting the basis for such claim; provided, however, that the indemnified party's failure to give such notice shall not affect any rights or remedies of such Indemnified party hereunder with respect to indemnification for Damages except to the extent that the Indemnifying party is prejudiced thereby.
 - (2) In the event of any claim for indemnification hereunder resulting from or in connection with any claim or legal proceeding by a third party, the notice to the Indemnifying party shall specify, if known, the amount or any estimate of the amount of the liability arising therefrom. Neither the Indemnified party nor any Indemnifying party shall settle or compromise any claim by a third party for which the Indemnified party is entitled to indemnification hereunder, without the prior written consent of the other party, unless suit shall have been instituted against the Indemnified party and the Indemnifying party shall not have taken control of such suit after notification thereof as provided hereinafter.
 - (3) Upon receipt of a claim, the Indemnifying party shall promptly undertake the defense of the claim with counsel reasonably acceptable to the Indemnified party. At its own expense, the Indemnified party shall have the right to participate in the defense with counsel of its own choice. If the Indemnified party has assumed the defense of any such claim or legal proceeding on account of the Indemnifying party's failure or refusal to prosecute such claim or legal proceeding, then all costs and expenses incurred by the Indemnified

party in connection with such assumption shall constitute Damages. Each party agrees to cooperate fully with the other, such cooperation to include, without limitation, attendance at depositions and the provision of relevant documents as may be reasonably requested by the Indemnifying party; provided, however, that the Indemnifying party will hold the Indemnified party harmless from all of its expenses and costs, including attorneys' fees and costs, as and when incurred in connection with such cooperation by the Indemnified party.

- 6.4 Reasonable Diligence.** The standard of care for all professional and related services performed or furnished by SWS under this Agreement will be the care and skill ordinarily used by water purveyors practicing under similar conditions at the same time and in the same general locality.
- 6.5 Force Majeure.** Neither SWS nor the County will be in default if performance of its obligations under this Agreement is delayed, disrupted or becomes impossible because of any act of God, war, flood, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, or any other cause beyond the control of the parties (collectively, "Force Majeure"). SWS shall, however, fulfill its obligations pursuant to Section 6.2(b) to the extent feasible under the circumstances. Upon occurrence of any such event, the party claiming Force Majeure will carry out its responsibilities under this Agreement to the best of its ability under the circumstances, and will not be responsible for any damages, fines, penalties or claims resulting therefrom. Notwithstanding the foregoing, the party claiming Force Majeure will use diligent efforts to commence performance when it is reasonably possible to do so.

ARTICLE 7. TERM AND TERMINATION

- 7.1 Term.** This Agreement commences on the Effective Date and will remain in effect thereafter, subject to the right of either party to terminate this Agreement in accordance with this Article 7.
- 7.2 Termination.**
- (a) This Agreement may be terminated by the County, without cause, by the giving of sixty (60) days written notice of such termination to SWS. The County agrees to pay SWS all fees and charges, as set forth in Article 4, for services provided up to the effective date of termination.
 - (b) Either Party may terminate this Agreement in the event of a material breach of the obligations of the other Party, which breach is not cured within thirty (30) days of written notice of the breach from the non-breaching Party.

- (c) Should either Party invoke their rights to terminate the APA, this Agreement shall terminate at the same time as the APA unless the Parties agree in writing to have this Agreement terminate at another time.
- (d) Upon any termination in accordance with the terms of this Section 7.2, SWS will continue to provide services and will cooperate with the County for a period of sixty (60) days (or such lesser period as may be designated by the County) to transition operation of the Water System back to the County. SWS will be entitled to compensation as set forth in Article 4 for its services during the transition period.

ARTICLE 8. MISCELLANEOUS

- 8.1 County Records.** SWS will manage all records generated through or during its operation of the Water System consistent with the County's obligations under the Public Records Act, Government Code §6250, et seq, and auditing standards, as well as otherwise necessary to generate routine operating reports. The County will reimburse SWS for the costs incurred by SWS to archive these records. If this Agreement is terminated without SWS becoming the lawful owner of the Water System, SWS will promptly deliver to the County or the County's designated agent all such records.
- 8.2 Modification.** Modification of this Agreement may be made only by a written document signed by representatives of both SWS and the County.
- 8.3 Notice.** Any notice required under this Agreement will be in writing and sent by nationally recognized overnight courier or hand delivery to the intended party's address of record. Notice will be deemed given upon receipt. The Parties' addresses of record are as follows:

If to the County:

County of Los Angeles
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803
Tel: (626) 300-3300
Email: rbryden@dpw.lacounty.gov
Attn: Russ Bryden
Assistant Deputy Director

If to SWS:

Suburban Water Systems
1325 N. Grand Avenue, Suite 100
Covina, CA 91724
Telephone: 626-543-2500
E-mail: CGott@swwc.com
Attn: President

With a copy to (which shall not constitute notice):

Office of the County Counsel
County of Los Angeles
500 West Temple Street
Los Angeles, CA 90012
Tel: (213) 974-9668

With a copy to (which shall not constitute notice):

Suburban Water Systems
1325 N. Grand Avenue, Suite 100
Covina, CA 91724
Telephone: 626-543-2500
E-mail: Legal@swwc.com

Email:
wwellen@counsel.lacounty.org
Attn: Warren Wellen
Principal Deputy County Counsel

Attn: General Counsel

The Parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify any other address by giving at least fifteen (15) days' written notice to the other Party.

- 8.4 County Policies and Ordinances.** SWS shall comply with the County's policies and ordinances applicable to services described in this Agreement, as set forth in Exhibit 8.4.
- 8.5 Governing Law.** This Agreement and the rights and obligations of the Parties are governed by and construed and interpreted in accordance with the Laws of the State of California applicable to contracts made and to be performed wholly within California, without regard to choice or conflict of laws rules.
- 8.6 Attorneys' Fees.** In the event of any dispute and/or legal action arising from an interpretation and/or performance of any of the provisions of this Agreement, each party will bear its own attorneys' fees and costs.
- 8.7 Limitation of Liability.** Except for indemnity for third party claims pursuant to Section 6.3, neither SWS nor the County shall be liable for indirect, special, exemplary, consequential, incidental or punitive damages.
- 8.8 Integration Clause.** This Agreement contains the entire understanding, agreement of compromise and settlement between the parties with the respect to its subject matter, and supersedes all previous agreements concerning the subject matter.

[signature page follows]

IN WITNESS WHEREOF, the Parties to have executed this Agreement as of the Effective Date.

SUBURBAN WATER SYSTEMS

COUNTY OF LOS ANGELES

By _____
Craig Gott, President

By _____
Director of Public Works

APPROVED AS TO FORM:

RODRIGO A. CASTRO-SILVA
County Counsel

By _____
Deputy

LIST OF SCHEDULES

Schedule 2.1(e) – Reserved expenses and contracts

Schedule 6.1 – Insurance Requirements

Schedule 8.4 – Los Angeles County Contract Policies and Ordinances

SCHEDULE 2.1(e)
RESERVED CONTRACTS

- Avaya IP500 Office Telephone System Lease dated July 5, 2016, including 2017 amendment(s)
- Canon Financial Services Lease dated 9/15/2015, including amendments thereto
- MailFinance Lease dated 11/23/2016
- Smart Business Digital Solutions Copier Maintenance Agreement dated April 25, 2019
- Brinks Incorporated Services Agreement dated August 11, 2017
- Nobel iPad-based GIS system
- Utility bills for Sativa-owned premises

SCHEDULE 6.1 MINIMUM INSURANCE

Insurance. SWS agrees to provide and to maintain in effect at all times during the Term of this Agreement, at its sole expense, the following minimum insurance coverage:

- 1) Workers' compensation and employer's liability ("WC/EL"): insurance as required in the State of California with statutory WC limits and Employer's Liability limits in an amount not less than \$1,000,000 per accident for bodily injury by accident, \$1,000,000 policy limit by disease and \$1,000,000 per employee for bodily injury by disease.
- 2) Business automobile liability ("Auto"): insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 limits for bodily injury and property damage, combined.
- 3) Commercial general liability ("CGL"): insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Supplier or of any of its employees, agents, or subcontractors, per project, with \$2,000,000 per occurrence and \$5,000,000 in the aggregate, per project. In addition, coverages to include minimum limits of \$2,000,000 aggregate, covering Products and Completed Operations, \$1,000,000 for each occurrence of Personal and Advertising Injury and Contractual Liability coverage in an amount sufficient to cover contractor's indemnity obligations and not less than \$2,000,000 for each occurrence and \$5,000,000 in the aggregate. The policy limits can be satisfied through a combination of primary and excess coverage.

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LOS ANGELES COUNTY CONTRACT POLICIES AND ORDINANCES

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1. Assignment and Delegation

- a. SWS shall not assign its rights or delegate its duties under the Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under the Agreement shall be deductible, at County's sole discretion, against the claims which SWS may have against County.
- b. Shareholders, partners, members, or other equity holders of SWS may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of SWS to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.
- c. Any assumption, assignment, delegation, or takeover of any of SWS's duties, responsibilities, obligations, or performance of same by any entity other than SWS, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against SWS as it could pursue in the event of default by SWS.

2. Authorization Warranty

SWS represents and warrants that the person executing this Contract for SWS is an authorized agent who has actual authority to bind SWS to each and every term, condition, and obligation of this Contract and that all requirements of SWS have been fulfilled to provide such actual authority.

3. Budget Reductions

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by SWS under this Contract shall also be reduced

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correspondingly. The County's notice to SWS regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, SWS shall continue to provide all of the services set forth in this Contract.

4. Compliance with Applicable Law

- a. In the performance of this Contract, SWS shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- b. SWS shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by SWS, its officers, employees, agents, or subconsultants, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to SWS's indemnification obligations under this Paragraph shall be conducted by SWS and performed by counsel selected by SWS and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event SWS fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from SWS for all such costs and expenses incurred by County in doing so. SWS shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

5. Compliance with Civil Rights Laws

SWS hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

6. Compliance with Jury Service Program

- a. This Contract is subject to provisions of the County's ordinance entitled Contractor Employee Jury Service (Jury Service Program) as codified in Sections 2.203.010

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through 2.203.090 of the Los Angeles County Code, incorporated by reference and made a part of this Agreement.

- b. Unless SWS has demonstrated to the County's satisfaction either that SWS is not a Contractor as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that SWS qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), SWS shall have and adhere to a written policy that provides that its Employees shall receive from SWS, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with SWS or that SWS deduct from the Employee's regular pay the fees received for jury service.
- c. This requirement applies in any year that SWS receives or will receive an aggregate sum of \$50,000 or more in any 12-month period under this Agreement. Employee means any California resident who is a full -time employee of SWS. Full- time means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) SWS has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If SWS uses any subcontractor to perform services for the County under this Agreement, the subcontractor shall also be subject to the provisions of this Paragraph if that subcontractor receives an aggregate sum of \$50,000 or more in any 12-month period for the performance of services relating to this Agreement. The provisions of this Paragraph shall be inserted into any such subcontract Agreement and a copy of the Jury Service Program shall be attached to the Agreement.
- d. If SWS is not required to comply with the Jury Service Program when the Contract commences, SWS shall have a continuing obligation to review the applicability of its exception status from the Jury Service Program, and SWS shall immediately notify County if SWS at any time either comes within the Jury Service Program's definition of "Contractor" or if SWS no longer qualifies for an exception to the Program. In either event, SWS shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Agreement and at its sole discretion, that SWS demonstrate to the County's satisfaction that either SWS does not meet the Jury Service Program's definition of "Contractor" and/or that SWS continues to qualify for an exception to the Program.
- e. d. SWS's violation of this Paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate this Agreement and/or bar SWS from the award of future County contracts for a period of time consistent with the seriousness of the breach.

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7. Confidentiality

- a. SWS shall maintain the confidentiality of all records and information, proprietary information, software codes, trade secrets, confidential information, etc., whether of County or third parties, in accordance with all applicable Federal, State, and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.
- b. SWS shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by SWS, its officers, employees, agents, or subconsultants, to comply with this Paragraph, as determined by County in its sole judgment. Any legal defense pursuant to SWS's indemnification obligations under this Paragraph shall be conducted by SWS and performed by counsel selected by SWS and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event SWS fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from SWS for all such costs and expenses incurred by County in doing so. SWS shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.

8. Conflict of Interest

- a. No County employee in a position to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by SWS herein, or have any other direct or indirect financial interest in this Agreement. No officer or employee of SWS who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.
- b. SWS represents and warrants that it is aware of, and its authorized officers have read, the provisions of Los Angeles County Code, Section 2.180.010, "Certain Contracts Prohibited," and that execution of this Agreement will not violate those provisions. SWS shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. SWS warrants that it is not now aware of any facts that create a conflict of interest. If SWS hereafter becomes aware of any facts that might reasonably be

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expected to create a conflict of interest, including those identified in Section 2.180.010, it shall immediately make full written disclosure of such facts to County. Full written disclosure shall include, but is not limited to, identification of all persons so identified and a complete description of all relevant circumstances. Failure to comply with the provisions of this Paragraph may be a material breach of this Contract subjecting SWS to either Contract termination for default or debarment proceedings or both.

9. Consideration of Hiring County Employees Targeted for Layoff/or Re-Employment List

Should SWS require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, SWS shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract. County shall periodically provide SWS with the current re-employment list. This section shall not apply to personnel added by SWS with the consent of the County.

10. Consideration of Hiring GAIN/GROW Program Participants

Should SWS require additional or replacement personnel after the effective date of this Contract, SWS shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet SWS's minimum qualifications for the open position. For this purpose, consideration shall mean that SWS will interview qualified candidates. The County will refer GAIN/GROW participants by job category to SWS. SWS shall report all job openings with job requirements to: GAINGROW@dpss.lacounty.gov to obtain a list of qualified GAIN/GROW job candidates. This section shall not apply to personnel added by SWS with the consent of the County.

In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

11. Background and Security Investigations

- a. Each of SWS's staff performing services under this Contract, who is in a designated sensitive position, as determined by County in County's sole discretion, shall undergo and pass a background investigation to the satisfaction of County as a condition of beginning and continuing to perform services under this Contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice to include State, local, and federal-level review, which may include, but shall not be limited to, criminal conviction information. The fees associated with the background investigation shall be at the expense of SWS, regardless of whether the member of SWS's staff passes or fails the background investigation.

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- b. If a member of SWS's staff does not pass the background investigation, County may request that the member of SWS's staff be removed immediately from performing services under the Contract. SWS shall comply with County's request at any time during the term of the Contract. County will not provide to SWS or to SWS's staff any information obtained through the County's background investigation.
- c. County, in its sole discretion, may immediately deny or terminate facility access to any member of SWS's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.
- d. Disqualification of any member of SWS's staff pursuant to this Paragraph shall not relieve SWS of its obligation to complete all work in accordance with the terms and conditions of this Contract.

12. CARD Track/Monitoring Database

The County maintains databases that track/monitor contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.

13. Compliance with County's Zero Tolerance Human Trafficking

SWS acknowledges that the County has established a Zero Tolerance Human Trafficking Policy prohibiting contractors from engaging in human trafficking.

If SWS or member of SWS's staff is convicted of a human trafficking offense, the County shall require that SWS or member of SWS's staff be removed immediately from performing services under the Contract. County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.

Disqualification of any member of SWS's staff pursuant to this Paragraph shall not relieve SWS of its obligation to complete all work in accordance with the terms and conditions of this Contract.

14. Compliance with Fair Chance Employment Practices:

SWS shall comply with fair chance employment hiring practices set forth in California Government Code Section 12952, Employment Discrimination: Conviction History. SWS's violation of this Paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract.

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15. Compliance with the County Policy of Equity:

SWS acknowledges that the County takes its commitment to preserving the dignity and professionalism of the workplace very seriously, as set forth in the County Policy of Equity (CPOE) (<https://ceop.lacounty.gov/>). SWS further acknowledges that the County strives to provide a workplace free from discrimination, harassment, retaliation and inappropriate conduct based on a protected characteristic, and which may violate the CPOE. SWS, its employees and subconsultants acknowledge and certify receipt and understanding of the CPOE. Failure of SWS, its employees or its subconsultants to uphold the County's expectations of a workplace free from harassment and discrimination, including inappropriate conduct based on a protected characteristic, may subject SWS to termination of contractual agreements as well as civil liability.

16. SWS Responsibility and Debarment

- a. For the purposes of this Section, being "responsible" means demonstrating the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Contract. It is the County's policy to conduct business only with responsible parties.
- b. SWS is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of SWS on this or other Contracts which indicates that SWS is not responsible, the County may, in addition to other remedies provided in the Contract, debar SWS from bidding or proposing on, or being awarded, and/or performing work on County Contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts SWS may have with the County.
- c. The County may debar a SWS if the Board of Supervisors finds, in its discretion, that SWS has done any of the following: (1) violated a term of a Contract with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on SWS's quality, fitness or capacity to perform a Contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.
- d. If there is evidence that SWS may be subject to debarment, the Department will notify SWS in writing of the evidence which is the basis for the proposed debarment and will advise SWS of the scheduled date for a debarment hearing before the Contractor Hearing Board.

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- e. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. SWS and/or SWS's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether SWS should be debarred, and, if so, the appropriate length of time of the debarment. SWS and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
- f. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.
- g. If SWS has been debarred for a period longer than five years, that SWS may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that SWS has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
- h. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
- i. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- j. These terms shall also apply to subcontractors of County Contractors.

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17. SWS's Acknowledgement of County's Commitment to the Safely Surrendered Baby Law and Notice to Employees Regarding the Safely Surrendered Baby Law

SWS acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. SWS understands that it is the County's policy to encourage all County SWSs to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at SWS's place of business. SWS will also encourage its Subconsultants, if any, to post this poster in a prominent position in the Subconsultant's place of business. The County's Department of Children and Family Services will supply SWS with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

SWS shall notify and provide to its employees, and shall require each Subconsultant to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

18. SWS's Warranty of Adherence to County's Child Support Compliance Program

SWS acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through Contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting SWS's duty under this Contract to comply with all applicable provisions of law, SWS warrants that it is now in compliance and shall during the term of this Contract maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

Failure of SWS to maintain compliance with these requirements shall constitute a default by SWS under this Contract.

19. County's Quality Assurance Plan

The County, or its agent, will monitor SWS's performance under this Agreement on not less than an annual basis. Such monitoring will include assessing SWS's compliance with all Contract terms and conditions and performance standards. SWS deficiencies which County determines are significant or continuing, and that

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may place performance of the Agreement in jeopardy if not corrected, will be reported to the Board and listed in the appropriate contractor performance database. The report to the Board will include improvement/corrective action measures taken by the County and SWS. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties as specified in this Agreement.

20. County Rights

The County may employ, either during or after performance of this Contract, any right of recovery the County may have against SWS by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of the County under this Contract are in addition to any right or remedy provided by California law.

21. Damage to County Facilities, Buildings Grounds

- a. When applicable, SWS shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by SWS or employees or agents of SWS. Such repairs shall be made immediately after SWS has become aware of such damage, but in no event later than thirty (30) days after the occurrence.
- b. If SWS fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by SWS by cash payment upon demand.

22. Default Method of Payment: Direct Deposit or Electronic Funds Transfer

- a. The County, at its sole discretion, has determined that the most efficient and secure default form of payment for goods and/or services provided under an agreement/ contract with the County shall be Electronic Funds Transfer (EFT) or direct deposit, unless an alternative method of payment is deemed appropriate by the Auditor-Controller (A-C).
- b. The SWS shall submit a direct deposit authorization request via the website <https://directdeposit.lacounty.gov> with banking and vendor information, and any other information that the A-C determines is reasonably necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.
- c. Any provision of law, grant, or funding agreement requiring a specific form or method of payment other than EFT or direct deposit shall supersede this requirement with respect to those payments.

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- d. At any time during the duration of the agreement/contract, a SWS may submit a written request for an exemption to this requirement. Such request must be based on specific legal, business or operational needs and explain why the payment method designated by the A-C is not feasible and an alternative is necessary. The A-C, in consultation with the contracting department(s), shall decide whether to approve exemption requests.

23. Disallowed Cost

If Proposer's compliance with a County contract has been reviewed by the Department of the Auditor-Controller within the last 10 years, Proposer must not have unresolved questioned costs identified by the Auditor-Controller, in an amount over \$100,000.00, that are confirmed to be disallowed costs by the contracting County department, and remain unpaid for six months or more from the date of disallowance, unless such disallowed costs are the subject of current good faith negotiations to resolve the disallowed costs, in the opinion of the County.

24. Employment Eligibility Verification

SWS warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. SWS shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. SWS shall retain such documentation for all covered employees for the period prescribed by law. SWS shall indemnify, defend, and hold harmless County, its officers, and employees from employer sanctions and any other liability which may be assessed against SWS or County in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

25. Facsimile/Electronic Representations

The County and SWS hereby agree to regard facsimile/electronic representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Agreement, Change Orders and amendments prepared, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to amendments to this Contract, such that the parties need not follow up facsimile/electronic transmissions of such documents with subsequent (non-facsimile/electronic) transmission of "original" versions of such documents. Electronic signatures include facsimile or email electronic signatures. Each executed counterpart shall be deemed an original. All counterparts, taken together, constitute the executed Agreement. The parties

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hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Agreement had been delivered had been signed using a handwritten signature. SWS and County (i) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

26. Fair Labor Standards

SWS shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its agents, officers, and employees from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by SWS's employees for which County may be found jointly or solely liable.

27. Gratuities

SWS is advised that it is improper for any County officer, employee, or agent to solicit consideration, in any form, from SWS with the implication, suggestion, or statement that SWS's provision of the consideration, or failure to provide consideration, may cause favorable or unfavorable treatment, respectively, for SWS relating to the amendment or extension of the Contract or the making of any determinations with respect to SWS's performance under this Contract. A SWS shall not offer or give, either directly or through an intermediary, such improper consideration, in any form, to a County officer, employee, or agent for the purpose of securing favorable treatment as described herein.

A SWS shall immediately report any attempt by a County officer, employee, or agent to solicit such improper consideration. The report shall be made either to the

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County manager charged with the supervision of the employee or to the County Auditor- Controller's Employee Fraud Hotline at (800) 544-6861.

Among other items, such improper consideration may take the form of cash; discounts; services; and the provision of travel, entertainment, or tangible gifts.

Note that SWS's failure to adhere to this requirement could subject this Contract to Termination for Improper Consideration Paragraph in this Agreement.

28. Independent SWS Status

This Agreement is by and between County of Los Angeles and SWS and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and SWS. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

SWS shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of SWS. SWS understands and agrees that all persons furnishing services to County pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of SWS and not of County.

SWS shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of SWS pursuant to this Agreement.

29. Mental Health Services for Critical Incidents

In the event of a serious accident on the Project site, the Los Angeles County Department of Mental Health (DMH) will, if requested, respond. The response may be within a few hours or as long as a few days after the incident, depending on when the request was made. The services DMH will provide include crisis intervention, normalization of the stress response that survivors may be experiencing, stress management techniques and resources if the stress reactions increase in frequency or intensity. Requests for services may be made by calling the DMH Emergency Outreach Bureau Deputy Director, (213) 738-4924, during normal business hours or the ACCESS Center, (800) 854-7771, evenings, holidays, and weekends.

30. Most Favored Public Entity

If SWS's prices decline, or should SWS at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions

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to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

31. Nondiscrimination and Affirmative Action

- a. SWS certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- b. SWS shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- c. SWS certifies and agrees that it will deal with its subconsultants, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- d. SWS certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- e. SWS shall allow County representatives access to SWS's employment records during regular business hours to verify compliance with the provisions of this Paragraph when so requested by the County.
- f. If the County finds that any provisions of this Paragraph have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that SWS has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that SWS has violated the anti-discrimination provisions of this Contract.

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- g. The parties agree that in the event SWS violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

32. Non Exclusivity

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with SWS. This Contract shall not restrict Department from acquiring similar, equal or like goods and/or services from other entities or sources.

33. Notice of Delays

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

34. Notice of Disputes

SWS shall bring to the attention of the County's Project Manager and/or County's Project Manager's Supervisor any dispute between the County and SWS regarding the performance of services as stated in this Contract. If the County's Project Manager or County's Project Manager's Supervisor is not able to resolve the dispute, the Director of Public Works or his/her designee shall resolve it.

35. Notice to Employees Regarding the Federal Earned Income Credit

SWS shall notify its employees, and shall require each subconsultant to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.

36. Prohibition Against Inducement or Persuasion

Notwithstanding the above, SWS and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party without the consent of the other party. No bar exists against any hiring action initiated through a public announcement.

37. Prohibition from Participation in Future Solicitation(s)

Neither SWS nor any subsidiary of or subcontractor to SWS shall participate in any way in any future solicitation conducted by County that includes or is based

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upon any solicitation document that is developed as a result of the services rendered by SWS under this Agreement. As this prohibition applies to subcontractors of SWS, SWS shall notify any subcontractors providing services under this Agreement of this prohibition before they commence work under this Agreement. Any response to a solicitation submitted by SWS or by any subsidiary of or subcontractor to SWS in violation of this provision shall be rejected by County. This provision shall survive the expiration or other termination of this Agreement.

38. Public Records Act

- a. Any documents submitted by SWS; all information obtained in connection with the County's right to audit and inspect SWS's documents, books, and accounting records pursuant to Record Retention and Inspection/Audit Settlement Paragraph of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret," "confidential," or "proprietary." The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.
- b. In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," SWS agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in an action or liability arising under the Public Records Act.

39. Publicity

- a. SWS shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing SWS's need to identify its services and related clients to sustain itself, the County shall not inhibit SWS from publishing its role under this Contract within the following conditions:
 - SWS shall develop all publicity material in a professional manner; and
 - During the term of this Contract, SWS shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the Director of Public Works or his/her designee. The County shall not unreasonably withhold written consent.

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- b. SWS may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Paragraph shall apply.

40. Record Retention and Inspection/Audit Settlement

SWS shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. SWS shall also maintain accurate and complete employment and other records relating to its performance of this Contract. SWS agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by SWS and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by SWS at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, SWS shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

- a. In the event that an audit of SWS is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by SWS or otherwise, then SWS shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of SWS's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- b. Failure on the part of SWS to comply with any of the provisions of this Paragraph shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.
- c. If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of SWS regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to SWS, then the difference shall be either: a) repaid by SWS to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to SWS from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the

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County to SWS, then the difference shall be paid to SWS by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

41. Recycled Bond Paper

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, SWS agrees to use recycled-content paper to the maximum extent possible on this Contract.

42. Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program

Failure of SWS to maintain compliance with the requirements set forth in Contractor's Warranty of Adherence to County's Child Support Compliance Program Paragraph, shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of SWS to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Contract pursuant to Termination for Default and pursue debarment of SWS, pursuant to County Code Chapter 2.202.

43. Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program.

Failure of SWS to maintain compliance with the requirements set forth in "Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of SWS to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of SWS, pursuant to County Code Chapter 2.206.

44. Termination for Non-Adherence of County Lobbyist Ordinance

SWS, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by SWS, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of SWS or any County Lobbyist or County Lobbying firm retained by SWS to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

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45. Termination For Non-Appropriation of Funds

Notwithstanding any other provision of this Contract, the County shall not be obligated for SWS's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify SWS in writing of any such non- allocation of funds at the earliest possible date.

46. Time Off for Voting

SWS shall notify its employees, and shall require each subconsultant to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than 10 days before every statewide election, SWS and SWS's subconsultants shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

47. Warranty of Compliance with County's Defaulted Property Tax Reduction Program

SWS acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless SWS qualifies for an exemption or exclusion, SWS warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter. 2.206.

48. Validity

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

49. Waiver

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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50. Warranty Against Contingent Fees

- a. SWS warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by SWS for the purpose of securing business.
- b. For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

51. Prevailing Wage Requirements

This work may include prevailing wage and non-prevailing wage work.

a. Prevailing Wages

When applicable, the services provided in this Contract may constitute "public works" as defined in California Labor Code 1720, and therefore may be subject to payment of prevailing wages, compliance monitoring and enforcement by the Department of Industrial Relations (DIR).

The Director of the DIR has established the general prevailing rate of per diem wages for each craft, classification, type of worker, or mechanic needed to execute public works and improvements. The current general prevailing wage rate determinations are available at www.dir.ca.gov/dlsr/pwd/index.htm. SWS is required to pay its agents and employees the applicable, current prevailing wage rate and is responsible for selecting the classification of workers required to perform this service.

The Parties acknowledge the SWS intends to retain contractors to perform any duties of SWS under this Agreement that are such to prevailing wages. SWS agrees to ensure its contractors comply with the provisions of Section 1775 of the California Labor Code relating to the payment of prevailing wages, the utilization of apprentices in accordance to LC 1777.5, and the assessment of penalties determined by the California Labor Commissioner. Pursuant to Section 1773.2 of the California Labor Code, copies of the prevailing rate of per diem wages are on file at the County Department of Public Works, Construction Division, and will be made available for inspection by request to the Contract Administrator. Future effective wage rates will be on file with the Department of Industrial Relations. The new wage rates shall become effective on the day following the expiration date of the current determinations and apply to the Contract in the same manner as if they had been included or referenced in the Contract.

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b. Work Records

SWS shall ensure its contractors comply with the requirements of Section 1812 of the Labor Code. SWS shall maintain an accurate written record of all employees working on the project each calendar day. The record shall include each employee's name, Social Security number, job classification, and the actual number of hours worked.

c. Posting of Notices

SWS shall manage compliance with the provisions of Section 1773.2 of the Labor Code for any work managed by SWS that is subject to such prevailing wage requirements, including ensuring the posting of a copy of the prevailing wage rates at the worksite and comply with applicable law including posting of jobsite notices required by 8 California Code Reg. §16451(d):

"This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the Contract for public work and to all contractors and other persons having access to the jobsite to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate jobsite posting of minimum prevailing rates required to be maintained by the public entity, which awarded the public works Contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).

Local Office Telephone Number:

Division of Labor Standards Enforcement Office 320 West Fourth Street, Suite 450

Los Angeles, CA 90013 (213) 620-6330

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 hours per day or 40 hours per week, etc.) as well as the name of the employer,

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the public entity which awarded the public works Contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at <http://www.dir.ca.gov/PublicWorks/PublicWorks.html>."

d. Certified Payroll Records

When applicable, SWS shall manage compliance with the requirements of Section 1776 of the Labor Code. SWS and Subcontractors, if any, must furnish certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement) in a format prescribed by the Labor Commissioner.

When requested by the County, certified payroll records must be submitted to the County.